



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03305
)
Applicant for Security Clearance)
)
)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: John V. Berry, Esq.

03/30/2021

Decision

MASON, Paul J., Administrative Judge:

Applicant was born in the United States (U.S.) and has lived in this country her entire life of 26 years. She was educated in this country. For the last 13 years, she has been living with her parents. She has been interacting with her network of friends and family including her mother, sister and brother-in-law, cousin, and uncle, all naturalized U.S. citizens born in Pakistan. Because of the pandemic, she has spent more time recently working remotely from home, helping her mother operate a daycare nursery. Based on her strong attachments to the U.S., Applicant has overcome the security concerns arising from the foreign influence guideline. Eligibility for security clearance access is granted.

Statement of the Case

On January 3, 2019, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. On March 27, 2019, she was interviewed by an investigator from the Office of Personnel Management (OPM). Following a review of Applicant’s investigative case file, the Department of Defense Counterintelligence and Security Agency (DOD) (CSA) could not make the

preliminary affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated February 21, 2020, detailing security concerns under the guideline for foreign influence (Guideline B). The action was taken under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), June 8, 2017.

Applicant provided her notarized answer on March 25, 2020. The case was assigned to me on August 27, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 19, 2020, for a hearing on December 4, 2020. The hearing was held as scheduled. The Government's two exhibits and Applicant's 13 exhibits (AE) A-M were entered into evidence without objection. The Government's administrative notice memorandum and source documents, and Applicant's administrative notice memorandum and source documents were remarked as HE 1 and HE 2, respectively. DOHA received the transcript (Tr.), and the record closed on December 30, 2020.

Administrative Notice

I have taken administrative notice of certain relevant facts related to Pakistan. The facts, which are limited to matters of general knowledge and not subject to reasonable dispute, come from source material published by the Department of State and Department of Justice. The source material includes joint statements, fact sheets, and remarks published by the White House and the Secretary of State (through the Department of State). (HE 1)

I also take administrative notice of a legal framework reached in October 2020 by the U.S. and Pakistan to resolve parental child abduction issues. (HE 2) I am unable to take administrative notice of an article dated October 26, 2020. While the article contains several indisputable facts about Pakistan's history, various conclusions and opinions about the current bilateral relationship between two countries are subject to debate. See HE 2 at 36-39.

Findings of Fact

The SOR alleges that Applicant's three aunts (SOR 1.a), two uncles (SOR 1.b), and five cousins (SOR 1.c), are citizens and residents of Pakistan. Applicant admitted all SOR allegations. She requested a hearing.

Applicant, 26 years old, was born in the U.S. in August 1994, and has lived in this country her entire life. (AE E) She received her high school diploma in June 2012, her associate's degree in August 2014 (business administration), and her bachelor's degree (information systems and operations management) in December 2016, from

American schools. (Tr. 45, 70; AE C, F, G, H) She has been employed as an information technology (IT) analyst with her current employer since February 2017. (AE D) She supports two federal agencies as established by her Common Access Cards (CACs). Before her current job, she interned with another federal agency. Her employment record shows that she has been a delivery manager, a manager's assistant, and a bank teller. In her current employment, she has held a public trust clearance. Applicant has never violated work-related rules or rules applying to a public trust position. She seeks a security clearance. (GE 1 at 1-12; Tr. 39-41, 66-67; AE M)

Applicant has lived with her parents at their U.S. address since 2007. Her father, who became a U.S. citizen in 1996, passed in 2012. (GE 1 at 25-26, 76; Tr. 41) Applicant's current remote working status at home due to the pandemic has allowed her to spend more time helping her mother operate a home-based daycare business. (Tr. 44) Her mother, born in Pakistan 52 years ago, became a U.S. citizen in 2003 and began her daycare business in 2008. Applicant's mother received no financial compensation after Applicant's father died in 2012. (GE 1 at 23-24; Tr. 43-44, 69)

Applicant's 29-year-old sister was born and resides in the U.S. She lives with her husband, Applicant's brother-in-law, a naturalized U.S. citizen; he was the first witness to testify telephonically. (GE 1 at 26; Tr. 10). In addition to the two uncles listed in the SOR, who are residents and citizens of Pakistan discussed below, Applicant has another uncle born in Pakistan who became a U.S. citizen and lives in the central part of the U.S. He is employed by a U.S. contractor as a translator for a branch of the U.S. military. (Tr. 42-43) Also living in the Midwestern U.S. is Applicant's other cousin who recently became a U.S. citizen. (Answer to SOR; Tr. 88)

SOR 1.a – Applicant's three aunts, her mother's sisters, are residents and citizens of Pakistan. I will address each relative from the oldest to the youngest. (GE 1 at 27; GE 2 at 5; Tr. 47, 74) Applicant's 74-year-old aunt is a housewife. She has never had ties to the Pakistani government. According to Applicant's January 2019 e-QIP, Applicant had monthly contact with her by phone. At the December 2020 hearing, Applicant explained that the monthly telephonic contact was primarily initiated by her mother with Applicant exchanging brief pleasantries during the phone calls. Face-to-face contact has decreased because this aunt does not visit as much as she did in the past. Applicant spoke with her by phone about two months ago when this aunt came to the Midwestern U.S. to visit her daughter (Applicant's recently naturalized cousin). Applicant's last face-to-face contact with this aunt was during an earlier trip two years ago to the U.S. to visit her daughter. Though this aunt is unaware that Applicant is applying for a security clearance or currently has a public trust clearance, she knows that Applicant works in IT. (GE 1 at 41; GE 2 at 4; Tr. 49-51, 74, 79-80)

Applicant's 72-year-old aunt is a housewife. Though Applicant indicated in January 2019 that her phone contact was once a month, at the hearing, she clarified the monthly contact as being less, primarily due to the family group chat sessions on social media, with Applicant speaking to this aunt three to four times a year. This aunt contacts Applicant's mother weekly because she is the only sister in the U.S. This aunt does not

know that Applicant is applying for a security clearance or currently has a public trust clearance. (GE 1 at 27; GE 2 at 5; Tr. 47, 74)

Applicant's 64-year-old aunt has always been a housewife. Applicant described her contact with this aunt as yearly. The last time she spoke with her was when her husband passed in 2018. This aunt does not know Applicant is applying for a security clearance or currently has a public trust clearance. (GE 1 at 35; Tr. 48-49, 78-79) This aunt has no ties to the Pakistani government or military. Applicant has never provided financial support to her aunts. (Tr. 47-51)

SOR 1.b – Applicant's 79-year-old uncle, married to Applicant's 72-year-old aunt (SOR 1.a), is retired from the Pakistani military and is spending his retirement at home. Applicant does not know what this uncle's job was in the military. He has no present ties to the Pakistani government. Applicant's social media contacts with him are from four times a year to once every two years, depending on whether she travels to Pakistan. She could not recall when she last spoke with him by phone. This uncle does not know she is applying for a security clearance or currently has a public trust clearance. (GE 1 at 32; Tr. 52, 77-78, 81-82)

Applicant's 78-year-old uncle is a realtor in Pakistan with no ties to the Pakistani government. He is married to Applicant's 74-year-old aunt described in SOR 1.a above. Applicant's contact with this uncle is every four months and whenever Applicant visits the country. This uncle is unaware that Applicant is applying for a security clearance or that she currently holds a public trust clearance. (GE 1 at 43; GE 2 at 5; Tr. 52, 77)

SOR 1.c – (1) Applicant's 48-year-old cousin is a major in the Pakistani army. This cousin is the son of Applicant's 64-year-old aunt (SOR 1.a). He has annual contact with Applicant. Though she testified that she never contacted him by text, phone, or email, she indicated in her January 2019 e-QIP and March 2019 PSI, that she had contact with this cousin once a year by telephone and text. This uncle probably knows that Applicant works in an IT position, but does not know whether she holds any kind of clearance. Though Applicant does not know where this cousin is currently stationed, the information that she placed in her January 2019 e-QIP identifying this cousin's rank and job location, came from this cousin's sister, who is also Applicant's 44-year-old cousin described in SOR 1.c. (GE 1 at 37-39; GE 2 at 5; Tr. 58-59, 86-87)

(2) Applicant's 46-year-old cousin was a wing commander in the Pakistani air force. He joined the military right after graduating from college and left the service rather than retire when he was about 40 years old (circa 2013). One of Applicant's aunts told her mother that this cousin left the service and is currently weighing his employment options. She believes he will seek a commercial pilot position after the end of the pandemic. Applicant described her contact with him as quarterly when her mother contacts him. The last telephonic contact Applicant had with this cousin was in October 2020, and the last face-to-face contact was in 2018 when she visited Pakistan. The information Applicant obtained about this cousin's job location which she provided in her

January 2019 e-QIP and March 2019 PSI came from this cousin's 44-year-old sister listed in SOR 1.c. (GE 1 at 39-41; GE 2 at 5; Tr. 60-61, 84, 86-89, 95)

Though Applicant initially testified that the 46-year-old cousin never served in the military, the information in her January 2019 e-QIP unequivocally provides this cousin's military status. In sum, the documentation and her credible testimony convinces me that Applicant was not trying to misrepresent information regarding the military background of either cousin. (GE 1 at 39-41; GE 2 at 5; Tr. 60-61, 84, 86-89, 95)

(3) Applicant has quarterly contact with her unemployed 45-year-old cousin. There is no indication in the record that this cousin has ties to the Pakistani government or military (GE 1 at 28; GE 2 at 4; Tr. 53-54)

(4) In January 2019, Applicant had quarterly contact with her 44-year-old cousin by phone or electronically. This cousin, a housewife, has no ties with the Pakistani government. The last time Applicant saw her was in April 2018 when she visited Pakistan. This cousin used to live at another location in the U.S. and Applicant visited her many times. This cousin is not aware that Applicant is applying for a security clearance or currently has a public trust position. (GE 1 at 36; GE 2 at 5; Tr. 59-60, 67)

(5) Applicant is closest to her 36-year-old cousin. This cousin is presently unemployed after working as a project manager for a private company that plans and produces social events. When questioned why Applicant texts this cousin daily, she replied that this cousin, Applicant, her sister, and Applicant's other cousin (a U.S. citizen) living in the Midwestern U.S., participate in an electronic group chat room on social media. They talk about social events, but Applicant never talks about her work. Her last face-to-face contact with her 36-year-old cousin was in 2019 when this cousin was in the United States visiting her sister (Applicant's other cousin who recently became a U.S. citizen). This cousin knows Applicant has a clearance but is unaware of the type. (GE 1 at 31; GE 2 at 4; Tr. 55-57, 80-81, 84-86)

Applicant also has a 48-year-old cousin (unalleged) who was born in Pakistan and is now a naturalized citizen and resident of Australia. He is employed as a senior financial planner. (GE 1 at 33-34)

Applicant traveled to Pakistan six times between 2010 and April 2018. The reasons for the trips were holiday events or weddings, except for the last trip in April 2018, when Applicant's grandmother died. (GE 1 at 54-55; Tr. 45) Applicant has reported all foreign travel to her facility security officer (FSO). She understands that any effort to exert pressure on her must be reported to the FSO too. She has never been cited for a violation of public trust or CAC regulations and policies. She does not know whether she will return to Pakistan. (GE 1 at 47-58; GE 2 at 5-6; 62, 95)

Neither Applicant nor her mother have foreign financial interests of any kind in Pakistan. Applicant has no foreign financial interests that are controlled by someone on

her behalf. She has no future financial interests in Pakistan. She has never provided financial support to any foreign national. She has never been a part of a group or association that endorses terrorism, violence, or that advocates the overthrow of the U.S. (GE 1 at 44-45, 65-66; Tr. 62, 74-76, 90)

Applicant earns \$85,000 annually and hopes to purchase a home in the next two years. Her U.S. financial interests include an automobile and a \$35,000 retirement account which she contributes to regularly. All of her friends reside in the United States. (Tr. 63-64, 90)

Character Evidence

Five witnesses testified by telephone in Applicant's behalf. Her brother-in-law, a telecommunications employee with a security clearance, recommended Applicant for a security clearance based on her ability to follow the rules and his belief that she would not favor Pakistani interests over those of the U.S. (Tr. 10-16)

A management consultant for a federal agency has held a public trust clearance for the past three years. She has known Applicant 24 years as they grew up together. Based on her honesty and preference for the U.S., the consultant recommends Applicant for a security clearance. (Tr. 17-21)

A volunteer for an international organization, who held a security clearance while working for Applicant's current employer between 2017 and October 2020, testified that they met in college in 2013. The volunteer considers Applicant's honesty, security compliant attitude, and her preference for U.S. interests over those of Pakistan, to be admirable character traits. (Tr. 23-27)

A consultant for Applicant's employer for more than three years, has worked with Applicant for about one and a half years. They have become good friends. The consultant endorses Applicant's security clearance application based on her performance, honesty, and compliance with work rules. (Tr. 27-31)

In 2015, Applicant's fifth witness, a technologist, enrolled her first son at the daycare service operated by Applicant's mother. She met Applicant who was assisting at the daycare. After her second son's birth, she enrolled him in the daycare too. Based on her regular observation of Applicant's performance at the day care over the six-year period, the technologist considers her to be honest and trustworthy. (Tr. 32-35)

Five individuals and a married couple provided written character references in Applicant's behalf. All references commented favorably about Applicant's honesty. The doctor noted Applicant's steadying influence on people around her. The project manager was impressed with Applicant's leadership qualities. Applicant's direct supervisor lauded her honesty and diligence in helping her team complete tasks successfully and in a timely fashion. The couple was impressed with how dutiful

Applicant was in caring for the children in daycare. The team leader is happy that Applicant is a member of his staff because of her team worker attitude. (AE I at 17-22)

Administrative Notice – Pakistan

Pakistan is a parliamentary Islamic republic with significant internal problems caused by terrorist organizations concentrated in several locations within the country. In September 2012, the United States officially declared the Haqqani Network a foreign terrorist organization.

As of 2014, parts of Pakistan's Federally Administered Tribal Areas, Khyber Pakhtunkhwa province, and Balochistan province were regarded as safe havens for terrorist groups, including al-Qaeda, the Haqqani Network, Tehrik-e Taliban Pakistan, Lasahkar I Jhangvi, and the Afghan Taliban. These groups create ongoing security problems by targeting western interests, U.S. citizens, senior Pakistani officials, minority political groups, and religious entities.

Operations in 2014 by the Pakistani military against some of the terror groups had only marginal success. With the passage of time, there has been an overall decline in the scope and frequency of terrorist attacks. In 2019, the country took action against several terrorist groups by disrupting their financing and indicting some of their leaders.

The human rights record of Pakistan is not good. Extrajudicial killings, torture, and disappearances have been reported, along with intrusive government surveillance of politicians, political activists, and the media. Government and police corruption, sexual harassment, and gender discrimination are persistent problems. Pakistani government authorities seldom punish government officials for human rights violations.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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 nature of a country's government, its relationship to the United States, and its human rights record, are relevant in evaluating the chances that an applicant's family members are vulnerable to government pressure or influence. Terrorist organizations continue to operate against the United States and Pakistani interests from safe havens within the country. The government has a poor human rights record that is exacerbated by the country's terrorism and violence. When evaluating an applicant's ties to foreign family members, the totality of an applicant's foreign family ties as well as each individual family tie must be considered. Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

- (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.

Contacts and ties with family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth

under AG ¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. Applicant has three aunts, two uncles, and five cousins who are resident citizens of Pakistan. Her contacts with these foreign family members, which have been electronically, face-to-face, or by phone, have fluctuated from infrequent with her 78-year-old uncle to daily with her 36-year-old cousin. None of her uncles and aunts are connected to the Pakistani government or military. However, her 48-year-old cousin is a major in the Pakistani army. His 46-year-old cousin was a wing commander in the Pakistani air force before leaving the service at about age 40. The totality of these contacts and the risk of terrorism in Pakistan generates a heightened risk of coercion or exploitation under AG ¶ 7(a) and a potential conflict of interest under AG ¶ (7)(b).

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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

(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.

AG ¶ 8(a) does not apply. Applicant's aunts, uncles, and cousins are residents and citizens of Pakistan. One cousin is an active member of the Pakistani army, and another cousin left the Pakistani air force in about 2013. Government operatives or insurgent groups could exert pressure on Applicant through her foreign family members to obtain U.S. classified or sensitive information, or to damage the United States in some other way.

Applicant's contact-frequency with her foreign family members and her trips to attend family events in Pakistan, including her grandmother's funeral in April 2018, demonstrate that her ties to her foreign family members are not casual and infrequent. AG ¶ 8(c) does not apply.

AG ¶ 8(b) applies. Applicant's credible testimony demonstrates that her loyalty to the United States is such that she can be expected to resolve any conflict of interest in favor of the U.S. interest. She was born and raised in the United States 26 years ago.

She has been educated in American schools. She has earned an exemplary reputation for honesty and trustworthiness from her current supervisor, and from present and former coworkers. Applicant's 29-year-old sister, born and raised in United States with her husband, a naturalized U.S. citizen, lives in the same area as Applicant. Applicant's cousin and her third uncle, naturalized U.S. citizens, live in the Midwestern part of the country. Applicant's yearly salary is \$85,000. She owns an automobile and makes regular deposits to her U.S. retirement account which has grown to about \$35,000. Neither Applicant nor her mother have any property or financial interests in Pakistan.

Whole-Person Concept

I have examined the evidence under the foreign influence guideline in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the specific disqualifying and mitigating conditions in the context of all the surrounding circumstances in this case, including the heightened risk of terrorism in Pakistan. Applicant was born and raised in the United States. She earned her high school diploma, her associate's degree, and her bachelor's degrees at U.S. institutions. Applicant's former and current coworkers furnished telephonic evidence supporting her application for a security clearance based on her honesty, reliability, and ability to comply with rules. Applicant's written references are impressed with her honesty and dependability on her job and in her mother's child care business. Applicant's credible testimony and impressive character evidence convinces me that she will resist, repel, and report to the proper officials any attempt to exert improper influence on her through her foreign family members. Considering the evidence from an overall commonsense point of view, Applicant has mitigated the security concerns raised by the foreign influence guideline.

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.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge