



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



In the matter of:)	
)	
)	ISCR Case No. 21-00362
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2022

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 8, 2020. On June 16, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DCSA CAF acted under Executive Order (Exec. Or.) 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) effective June 8, 2017.

Applicant answered the SOR on July 14, 2021 (Ans.), and requested a decision based on the written record without a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government’s written brief with supporting documents, known as the file of relevant material (FORM), was submitted by

Department Counsel on August 24, 2021. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM on August 30, 2021. The case was assigned to me on November 9, 2021. On March 4, 2022, he submitted his spouse's Certificate of Naturalization, which is admitted into evidence as Applicant Exhibit (AE) A, without objection. No further response to the FORM or documents were submitted. Government Exhibits (GE) 1 through 6 are admitted into evidence without objection.

Procedural Ruling

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about the Islamic Republic of Pakistan, as included in the record in GE 6. Applicant did not object. I have taken administrative notice of facts contained in GE 6, updated and expanded them via publicly available government websites, and summarized them below.

Islamic Republic of Pakistan

Pakistan is a haven for numerous Islamist extremist and terrorist groups, and successive Pakistani governments are widely believed to have tolerated and even supported some of them as proxies in Pakistan's historical conflicts with its neighbors. Terrorists have targeted U.S. diplomats and diplomatic facilities in the past. Kidnapping is a concern throughout Pakistan, and extremist groups and criminals have targeted business owners and prominent families to finance terror operations. U.S. citizens have been kidnapped in other countries and held in Pakistan.

U.S. policy is to assist the creation of a more stable, democratic, and prosperous Pakistan, and has given billions in assistance. However, since the revelation that Al Qaeda leader Osama bin Laden had enjoyed years-long refuge in Pakistan, the U.S. suspended security assistance in 2018, with few exceptions. Pakistan remains a safe harbor for regionally focused terrorist groups.

In a 2011 report to Congress, the Office of the National Counterintelligence Executive reported that sensitive U.S. economic information and technology are targeted by the intelligence services, private sectors, academic research institutions, and citizens of dozens of countries, including Pakistan. In 2019, the U.S. Director of National Intelligence testified to "Pakistan's recalcitrance in dealing with militant groups" and predicted that Pakistan will continue to threaten U.S. interests "by deploying new nuclear weapons capabilities, maintaining its ties to militants, restricting counterterrorism cooperation, and drawing closer to China."

Significant human rights issues remain in Pakistan, including unlawful or arbitrary killings by the government or its agents; torture and cases of cruel, inhuman, or degrading treatment or punishment; arbitrary detention and harsh or life-threatening prison

conditions; political prisoners; politically motivated reprisal against individuals located outside the country; arbitrary and unlawful government interference with privacy; serious restrictions on free expression and the press; government interference with peaceful assembly; severe restrictions on religious freedom; corruption and crimes against personal and religious freedoms, and ethnic minorities. There is a lack of governmental accountability, and government officials were rarely punished for human rights abuses.

The U.S. Department of State issued a level 3 advisory (“reconsider travel”) for Pakistan on February 7, 2022, due to terrorism and sectarian violence. Additionally, Department of State assessed Islamabad, Peshawar, and Lahore as being critical-threat locations for terrorism directed at or affecting official U.S. Government interests.

Findings of Fact

Applicant is 27 years old. He has been employed by a defense contractor as a technical support engineer since May 2020. He was married in Pakistan in January 2017, and provided financial support for his spouse until she could relocate to the U.S. He has no children. He earned a bachelor’s degree in May 2017. He has never held a security clearance.

The SOR alleges that Applicant’s spouse is a Pakistani citizen residing in the United States, and his grandmother and in-laws are citizens and residents of Pakistan. Applicant admitted the SOR allegations with explanations.

Applicant was born in Pakistan and his parents, who are naturalized U.S. citizens, brought him to the U.S. in 2012, just before his 18th birthday. He automatically became a U.S. citizen by law since he resided with his parents. He is also a citizen of Pakistan.

In 2016, Applicant applied for and obtained a Pakistani National Identity Card for Overseas Pakistanis (NICOP). He used his Pakistani passport to travel to Pakistan in 2009 and 2015 to visit family, and to apply for a marriage certificate in Pakistan. He used his U.S. passport and his NICOP card to travel to Pakistan in 2017 to marry, and in 2018 and 2019. When traveling to Pakistan, he visited with his grandmother and since marrying, his in-laws. In 2019, he also traveled to Turkey and to Saudi Arabia for a religious pilgrimage with his parents, sister, and spouse.

Applicant’s spouse became a naturalized U.S. citizen on March 1, 2022 and they reside together in the U.S. It is unclear how he met his spouse. His grandmother is an unemployed citizen and resident of Lahore, Pakistan. Applicant visited with her when he traveled to Pakistan. He noted in his answer to the SOR, that his contact with her is “very casual and limited to greetings, asking how she is doing, and in return she does the same.” She is unfamiliar with his job and has not asked about his employment. His in-laws are also citizens and residents of Lahore, Pakistan. He interacts with his father-in-law quarterly, or about three to four times per year. He listed his interactions with his grandmother and mother-in-law in his SCA as monthly. He claims his grandmother and in-laws have not inquired about his employment, and he is unaware of their employment

history, including contacts, service, or previous employment with the Pakistani government. His father-in-law is currently self-employed in the clothing wholesale business.

Applicant did not provide documentary evidence of his financial status, community involvement, employment performance, or personal and professional character, nor was I able to make relevant inquiries that I would have made in a hearing environment.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a

nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's spouse is a citizen of Pakistan residing in the U.S., and his grandmother, father-in-law, and mother-in-law are citizens and residents of Pakistan (SOR ¶¶ 1.a-1.d). The security concern under this guideline 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 maybe 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 following disqualifying conditions under this guideline are relevant:

AG ¶ 7(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

AG ¶ 7(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.

“[T]he nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018).

When family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). [T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). Applicant has not rebutted this presumption.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified 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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See generally ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶¶ 7(a), 7(e) and 7(f) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. See, e.g., ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a

State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to the level 2 advisory (“exercise increased caution”). The U.S. Department of State has issued a level 3 advisory (“reconsider travel”) for Pakistan due to terrorism and sectarian violence.

AG ¶¶ 7(a) and 7(b) are established with respect to Applicant’s ties to family members that remain in Pakistan. Pakistan has supported the targeting of sensitive U.S. technology and military information. In addition, its history of support for terrorism, domestic violence, crimes against foreigners, government corruption, and significant human-rights violations are sufficient to meet the low standard of “heightened risk.” The “heightened risk” was recognized in the U.S. State Department Level 3 Travel Advisory (reconsider travel) in February 2022. The same factors that establish a “heightened risk” are sufficient to establish a potential risk of a conflict of interest.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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;

AG ¶ 8(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

AG ¶ 8(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.

Applicant has provided very little background information on his grandmother and in-laws living in Pakistan. Applicant maintains regular and recurring contact with each person, and has visited often, but I do not know whether their family members in Pakistan have had any personal or political ties to or employment with the Pakistani government, military, intelligence agencies, defense establishment, or terrorist group. It is understandable that Applicant maintains some ties to his and his spouse’s family in Pakistan, but it is not credible that he knows very little about the family members’ backgrounds after maintaining telephone/Internet and personal contact over the years. Additionally, he has not provided clear and convincing information regarding his financial status, community involvement, employment performance, or personal and professional character showing the degree of his ties and loyalty to the U.S.; information that would have been helpful in establishing mitigating credit. Based on the record presented, I am

unable to conclude that Applicant's close ties to family members in Pakistan would not place him in a conflicted position. As stated above, the protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. Based on the paucity of information provided in the record, I am unable to find any of the mitigating conditions to be fully applicable.

Whole-Person Concept

The ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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. AG ¶¶ 2(a), 2(c), and 2(d). The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline B in my whole-person analysis. I considered Applicant's citizenship and efforts to obtain citizenship for his spouse. I also evaluated this case under the conditions in which a conditional clearance may be granted.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor, or to further inquire about foreign influence matters. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not met his burden to mitigate the security concerns raised by his ties to foreign nationals residing in Pakistan.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant Applicant's eligibility for access to classified information. Applicant's application for a security clearance is denied.

Gregg A. Cervi
Administrative Judge