



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



In the matter of:)	
)	
)	ISCR Case No. 20-02566
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison P. O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), raised by Applicant’s family members in Pakistan. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 20, 2017. On February 4, 2022, the Department of Defense sent her a Statement of Reasons (SOR) alleging security concerns under Guideline B. The Department of Defense (DoD) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on February 8, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 9, 2022, and the case was assigned to me on February 15, 2023. On March 1, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 12, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. In Applicant's Answer to the SOR, she provided her husband's naturalization certificate, Applicant's Exhibit (AE) A, and at the hearing she offered the first page of her husband's passport AE-B. AE-A and AE-B were admitted without objection. She testified but did not present the testimony of any other witnesses or submit any other documentary evidence. At her request, I kept the record open through April 26, 2023, to enable her to submit additional documentary evidence. She did not submit any additional evidence. DOHA received the transcript (Tr.) on April 19, 2023.

Department Counsel requested that I take administrative notice of relevant facts about Pakistan. The request and supporting documents are attached to the record as Hearing Exhibit (HE) I. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's Answer to the SOR, she denied SOR ¶¶ 1.a, 1.b, and 1.d and admitted the remaining allegations, SOR ¶¶ 1.c and 1.e-1.h, with explanations. Her admissions in her Answer and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old contract background investigator for a federal agency. She has worked as a background investigator since 2017 and holds a public trust position giving her access to sensitive information. She was born in Pakistan and moved with her family to the United States in 1999. She obtained her U.S. citizenship in 2006. She earned her bachelor's degree from a U.S. university in 2010 and her master's degree from another U.S. university in 2012. She returned to Pakistan in 2010 and 2014 for a few months and lived in a summer property owned by her parents. (Tr. at 27.) In August 2014, while in Pakistan, she married. She and her husband lived with her husband's parents in Pakistan for about a year. Her husband was a Pakistani citizen when they married. (Tr. at 27-28.) For the next two and a half years she moved back and forth between the two countries. (Tr. at 29.) Her and her husband moved to the United States in 2015, and she gave birth to their first child that year. (Item 3 at 37 and Tr. at 29.) They stayed for just over a year and returned to Pakistan. In February 2017, she returned to the United States, and she gave birth to their second child in September of that year. They have lived in United States continuously since. (Tr. at 29.)

SOR ¶ 1.a alleges Applicant's husband is a citizen of Pakistan and a former prosecutor for the Pakistan government. Her husband received his U.S. citizenship in October 2020. (AE-A.) She provided a picture of the first page of his U.S. passport as mitigation. (AE-B.) She testified her husband is currently working for a federal agency as a linguist and that he holds a public trust position. (Tr. at 45.) Prior to coming to the United

States her “husband used to be a big prosecutor before coming here. But he gave up that position, so he’s no longer associated with any of that job or any of that.” (Tr. at 25.)

Applicant testified regarding her ties to her mother and father in-law, alleged in SOR ¶¶ 1.b and 1.f. Her mother and father in-law are citizens and residents of Pakistan. Her father-in-law retired from a civil service position in the Pakistan government in 2014. (Tr. at 25.) He receives a government pension. (Tr. at 34.) Apart from a six-month period as a teacher for a local village school, her mother-in-law did not work outside the home. (Tr. at 34, 38.) Applicant acknowledges she speaks with her mother-in-law monthly but only randomly speaks with her father-in-law. They do not talk about her work or his work. (Tr. at 25.) When she goes back for visits, she stays with her parents-in-law because culturally that is now considered her home. (Tr. at 43.)

SOR ¶ 1.c alleges Applicant’s brother-in-law is a citizen of Pakistan employed as a software engineer for the Pakistan government. Applicant does not know what her brother-in-law does, only that he has a software engineering degree and “has a government post.” (Tr. at 36.) She does not speak with her brother-in-law, and her husband keeps in touch with him to mostly discuss computer games about “once a month or maybe every two months.” (Tr. at 25, 43, and 44.)

SOR ¶ 1.d alleges Applicant’s grandmother is citizen and resident of Pakistan. Her grandmother passed away in 2021. (Answer and Tr. at 24.)

SOR ¶ 1.e alleges Applicant has an uncle who is a citizen and resident of Pakistan. She used to talk to him once a year, but now she does not have any contact with him. (Tr. at 24.)

SOR ¶ 1.g alleges Applicant has two sisters-in-law who are citizens and residents of Pakistan. She keeps in touch with one sister-in-law about once every two months and usually through a mobile instant messaging application. (Tr. at 24.) When they do see one another, they talk about “the kids and stuff, how everything is going.” (Tr. at 39.) Her other sister-in-law is actually her husband’s cousin, and she does not speak with her unless it is to wish her a holiday greeting. (Tr. at 24 and 38.)

SOR ¶ 1.h alleges Applicant maintains friendships with at least four individuals who are citizens and residents of Pakistan. In her Answer, she states they are all family members. She testified that two of the people listed are U.S. citizens. (Tr. at 24.) One of the remaining persons is her husband’s aunt, who runs a boutique business. Applicant keeps in contact with her about once a year or if a vacation is coming up so she can get “some new clothes or something.” (Tr. at 40.) The other remaining person is her mother’s brother, who resides in the United Arab Emirates. She has not had contact with him since her wedding. While visiting Pakistan to give condolences for her grandmother she did see him there. (Tr. at 40.)

Applicant does not own any property or hold any bank accounts in Pakistan. Her husband does not own property in Pakistan. He maintains a bank account with less than

\$1,000 in it. It is used in case of need when they are traveling in Pakistan. (Tr. at 41.) She does not provide support to anyone in Pakistan. She has donated to charities based on her religious faith, which prescribes giving “a certain amount of your income or out of your savings a certain percent of that.” She uses her father-in-law to distribute the money. She started donating in either 2019 or 2020 and estimates including 2023 she has donated about \$5,000 to \$6,000. (Tr. at 42.)

Applicant notes for the past 20 years she has predominately lived in the United States. Her ties back to Pakistan have been very limited, and she is really focused on being settled in the United States and making a future for herself. She stresses that by working in the security field she recognizes the threats and is mindful about saying or doing anything that could be used against her. She states a goal if granted a security clearance would be “to work for the U.S. Government and possibly be a civil servant for [the] U.S. Government.” (Tr. at 50-51.)

Pakistan is a federal parliamentary republic. Pakistan's military has carried out three coups since Pakistan's independence in 1947 and as of 2021 remained a dominant force in the country's political arena. In July 2018, Imran Khan took office as prime minister after the Pakistan Tehreek-e-Insaaf (PTI) party won a plurality of seats in the general elections. In 2021, Pakistan's chief military focus was on the perceived threat from India, but over the past 15 years, the military also has increased its role in internal counterinsurgency and counterterrorism missions. Pakistan has been engaged in a decades-long armed conflict with militant groups that target government institutions and civilians, including the Tehreek-e-Taliban Pakistan (TTP) and other militant networks.

The Department of State travel advisory for Pakistan is Level 3: Reconsider Travel to Pakistan due to terrorism and sectarian violence. U.S. citizens are advised not to travel to several areas of the country (Balochistan Province and Khyber Pakhtunkhwa Province, including the former Federally Administered Tribal Areas) due to terrorism and kidnapping. U.S. citizens are further advised not to travel to the immediate vicinity of the India-Pakistan border due to terrorism and the potential for armed conflict.

During 2021, there was a lack of government accountability, and abuses, including corruption, often went unpunished, fostering a culture of impunity among perpetrators, whether official or unofficial. Authorities seldom punished government officials for reported human rights abuses or acts of corruption

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.

Eligibility for a security clearance 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 all available and reliable information about the person, past and present, favorable, and unfavorable.

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. See *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 ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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.

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's father and mother in-law, brother and sisters in-law, uncle and four unnamed friends are citizens and residents of Pakistan (SOR ¶¶ 1.b-1.h) and that her husband is a citizen of Pakistan and a former prosecutor in the Pakistan government (SOR ¶ 1.a).

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.

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).

The following disqualifying condition under this guideline is potentially applicable:

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.

AG ¶ 7(a) requires 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.

Applicant's father-in-law, mother-in-law, brother-in-law, two sisters-in-law, two aunts, and an uncle are citizens and residents of Pakistan. There 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). 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. When foreign 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). The above disqualifying condition has been raised by the evidence.

The following mitigating conditions under this guideline are potentially relevant:

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 U.S.;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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.

I considered the totality of Applicant's ties to Pakistan. Applicant is a loyal U.S. citizen. She currently holds a public trust position giving her access to sensitive information in order to conduct security background investigations for a federal agency. She came to the United States in 1999 and became a U.S. citizen in 2006. Her children were born in the United States, and her husband became a U.S. citizen 2020. He works for a federal agency in a public trust position. She expressed her allegiance to the United States, which she considers her home. She credibly testified that her relationships with her family and in-laws in Pakistan could not be used to coerce or intimidate her into revealing sensitive or classified information. Her relationship with her in-laws was consistent with the cultural norms of Pakistan.

I find that Applicant's ties to Pakistan are outweighed by her deep and long-standing relationships and loyalties in the United States. By working in the security field, she is uniquely qualified to understand the threats and mindful what could be used against her and can be trusted to act in the favor of the United States. There is no conflict of interest, because she can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), and 8(c) are applicable.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, and persuasive at the hearing. 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 mitigated the security concerns raised by family ties in Pakistan.

Formal Findings

I make the following formal findings on the allegations in the SOR: Paragraph 1,

Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.h: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge