



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



In the matter of:)
)
) ISCR Case No. 22-01399
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

01/30/2024

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant refuted the security concerns under Guideline C, Foreign Preference, but did not mitigate the security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 8, 2019. On November 8, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B and Guideline C. The DOD issued the SOR 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines (AG)*, effective June 8, 2017.

Applicant answered the SOR on February 14, 2023, provided documents in support, and requested a hearing before an administrative judge. The case was assigned to me on September 11, 2023. On September 20, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing. I convened the hearing as scheduled on December 12, 2023.

During the hearing, Department Counsel offered Government Exhibits (GX) 1 and 2. Applicant testified and offered exhibits (AX) A through S. All exhibits were admitted without objection. Four witnesses also testified and provided character evidence on behalf of Applicant. DOHA received the hearing transcript (Tr.) on December 19, 2023.

Administrative Notice

Department Counsel requested that I take administrative notice (AN) of certain facts about the Islamic Republic of Pakistan, and about the United States' relations with that country. This is detailed in the Government's administrative notice filing AN I. Over Applicant's objections, I took administrative notice of AN I. Applicant declined to provide additional information relating to country conditions.

Official pronouncements by the President, the Department of State (DOS), DOD, or other appropriate federal agencies on matters of national security are administrative facts for purposes of DOHA adjudications and must govern the judge's analysis. See ISCR Case No. 17-04208 at 3 (App. Bd. Aug. 7, 2019). Where appropriate, I have also taken administrative notice of updated and current information from appropriate federal agencies, consistent with my obligation to make assessments based on timely information in cases involving the potential for foreign influence. See ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.")

Findings of Fact

In her answer to the SOR, Applicant admitted ¶¶ 1.a-1.d, and denied ¶¶ 1.e and 2.a with explanations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence submitted, I make the following additional findings of fact.

Applicant is 34 years old. She was born and raised in Pakistan and completed some college courses. In 2007, through her family's arrangement, she met and married her husband, a dual Pakistan and American citizen residing in the United States. In 2009, based on her husband's visa petition, she entered the United States. In January 2018, she naturalized as a U.S. citizen. Applicant and her husband have two children who are seven and nine years old and are U.S. citizens. (GX 1-2; Tr. 20-23)

From about September 2009 through August 2019, Applicant was a homemaker. In September 2019, she obtained employment as a software tester. She has been employed full-time with her sponsoring employer as an automation testing engineer since September 2021. She has not previously held a security clearance. (GX 1-2; AX N; Tr. 8)

Applicant's husband works as a software engineer. He emigrated from Pakistan to the United States when he was 16 years old. Applicant's father-in-law, now deceased, previously worked for the U.S. Embassy in Pakistan and brought his family to the United States in his retirement. Applicant's mother-in-law lives part-time with Applicant's family. (GX 1-2; Tr. 20-21, 73, 103-104)

Applicant is the oldest of four sisters. One of her sisters is a citizen and resident of the United States. This sister is married, has one child and lives within driving distance of Applicant. Her other two sisters remain in Pakistan. (See discussion below) (GX 1-2; Tr. 72-73)

The SOR alleges various foreign influence concerns under Guideline B and foreign preference concerns under Guideline C. The evidence pertaining to the allegations is summarized below.

SOR ¶¶ 1.a and 1.b allege security concerns relating to Applicant's mother and father who are citizens and residents of Pakistan. Applicant detailed that her mother previously worked as a tailor and her father previously worked as a chef. Both are now retired. Applicant last saw them in person in 2020 when she traveled to Pakistan for a month to help care for her mother who was receiving cancer treatment. Her mother's condition improved, but she continues to take medication. Applicant communicates with her mother and father several times per week. She provided about \$5,000 in financial support to them in 2003. (GX 1-2; AX H-I; Tr. 25, 28-37, 65-66)

In about May 2021, Applicant petitioned for her parents to receive immigrant visas to the United States. They have never visited the United States. However, Applicant testified that, since both of her sisters in Pakistan are now married and living with their new respective families, she was intending to assume the care of her parents in their elderly years. Also, by bringing her parents to the United States, she would no longer have a need to travel to Pakistan. As of the date of the hearing, the immigration petitions for her parents had been approved. However, her parents were still required to participate in visa interviews. Applicant was hopeful that her parents would complete the immigration process and move to the United States sometime in 2024. (GX 2; AX D-F, R; Tr. 27, 70-80)

SOR ¶ 1.c alleges security concerns relating to Applicant's two sisters who are citizens and residents of Pakistan. They both are married, with one wedding occurring in 2023. Neither they nor their husbands work for the Pakistani government. Applicant did not travel to Pakistan to attend the ceremony because she was concerned it would impact her security application. Instead, Applicant estimated that she provided about

\$2,000 to \$3,000 in gifts. She does not regularly provide financial support to her sisters. She communicates with her sisters every few weeks. (GX 1-2; AX J-K; Tr. 25-26, 37-46, 66-67)

SOR ¶ 1.d alleges security concerns relating to Applicant's uncle who is a citizen and resident of Pakistan and previously worked as a clerk for a Pakistan government council. He is now retired. During her background interview, Applicant stated that she was aware that her uncle worked in the public sector, but could not provide any additional information. She then asked her parents for details and learned that her uncle worked in a science and technology field. Neither Applicant nor her parents have a close relationship or maintain regular communications with her uncle. (GX 2; AX L; Tr. 46-51)

SOR ¶¶ 1.e and 2.a allege foreign influence and foreign preference security concerns arising from statements Applicant made during her November 2019 background interview. During the interview, Applicant was asked several questions regarding her Pakistani citizenship and loyalties to Pakistan compared to the United States. In response to questioning, Applicant stated that she would rather give up her job than give up her Pakistani citizenship. She further described having loyalty to the United States and to her family, but stated she would not participate in actions that negatively impacted Pakistan. In an October 2022 interrogatory response, Applicant indicated that the interview summary was accurate. She did not provide any clarification of her interview statements at that time. (GX 2)

Applicant testified that during the background interview, she was still struggling with English language proficiency. She claimed that she misunderstood the meaning of some of the questions that were asked during her interview. She clarified that she was willing to renounce her Pakistani citizenship if necessary and that she was loyal to the United States. She acknowledged that her work would be to the benefit of the United States over other countries including Pakistan. (AX G; Tr. 22-24, 52-59, 71)

Applicant currently earns about \$120,000 annually. A recent employment evaluation noted that she performed above expectations and maintained compliance with all of her employer's policies and procedures. She and her husband own their home and they do not have any investments in Pakistan. She testified that she is committed to raising her family in the United States. (AX M-N, S; Tr. 58-61, 72, 82, 107)

Multiple individuals testified about Applicant's strong commitment to her family, work and community. Her husband testified that over the years she has worked to increase her language capacity and is a responsible citizen of the United States. (AX O-P; Tr. 87-91, 100-102, 112-113)

The Islamic Republic of Pakistan

The separation in 1947 of British India into the Muslim state of Pakistan (with West and East sections) and largely Hindu India was never satisfactorily resolved; India

and Pakistan fought two wars and a limited conflict (in 1947-48, 1965, and 1999 respectively) over the disputed Kashmir territory. A third war between these countries in 1971 - in which India assisted an indigenous movement reacting to the marginalization of Bengalis in Pakistani politics - resulted in East Pakistan becoming the separate nation of Bangladesh.

The Department of State travel advisory for Pakistan is Level 3: Reconsider Travel due to Terrorism. Terrorism and ongoing violence by extremist elements have led to indiscriminate attacks on civilians, as well as local military and police targets. Significant human rights issues remain in Pakistan including unlawful or arbitrary killings; forced disappearance by the government or its agents; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government or its agents, as well as serious restrictions on free expression and media. Additionally, there is a lack of government accountability, and abuses, including corruption and misconduct by security services, often went unpunished, fostering a culture of impunity among perpetrators.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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, 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.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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 classified information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following are potentially applicable:

(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 classified information or technology and the

individual's desire to help a foreign person, group, or country by providing that information or technology.

The mere possession of close family ties with relatives living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009).

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). "The nature of the foreign government involved and the intelligence-gathering history of the 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).

With regard to Applicant's connections to Pakistan and the allegations contained in SOR ¶¶ 1.a through 1.d, all of the above security concerns are established. Pakistan has documented challenges with terrorism, human rights abuses and governmental accountability. Applicant maintains frequent contact with her parents and two sisters who are citizens and residents of Pakistan. Although Applicant has petitioned and received initial approval for her parents to move to the United States, they remain in Pakistan pending visa interviews. Applicant expressed hope that they would move in 2024 but could not provide any specific date as the process is outside of her control. Therefore, the above security concerns are not negated by her parents' undetermined move to the United States.

Applicant's contact with her uncle in Pakistan is significantly less frequent. Nonetheless, his former government association increases the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The above security concerns are also established for SOR ¶ 1.d.

With regard to Applicant's statements reflected in SOR ¶1.e, the summary of the background interview lacks clarity about Applicant's loyalty toward Pakistan and the United States. In subsequent statements, Applicant repeatedly asserted that she held loyalty to the United States as well as her family. I find that her statement about refusing to participate in anything that would negatively impact Pakistan to be reflective of the loyalty she had toward her family and not that of the country of Pakistan. Security concerns solely rising from this statement have not been established. However, the statement further supports that Applicant understandably maintains strong bonds of affection with family members in Pakistan.

After the Government produces substantial evidence of the disqualifying conditions, the burden shifts to Applicant to rebut them or otherwise prove mitigation. AG ¶ 8 provides conditions that could mitigate security concerns under Guideline B, including the following which 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

(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 maintains frequent contact with her parents and two sisters who reside in Pakistan. It cannot be said that her relationship with these family members are casual or infrequent. AG ¶ 8(c) does not apply to SOR allegations ¶¶ 1.a through 1.c.

Applicant has lived in the United States since 2009. Her husband is a U.S. citizen and they have two young children. They own their home and their investments are in the United States. They do not own any property or investments in Pakistan. Applicant also has one sister who is a citizen and resident of the United States. These are all factors that weigh in Applicant's favor.

However, Applicant's ties to Pakistan are also strong. She maintains a very close relationship with her parents and siblings in Pakistan, communicating with them frequently. She has provided financial support when needed.

Applicant failed to provide sufficient evidence to find that it is unlikely that she 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. Additionally, Applicant did not meet her burden of demonstrating that she would resolve any conflict of interest in favor of the U.S. interest. AG ¶¶ 8(a) and (b) do not apply to SOR ¶¶ 1.a through 1.c.

However, Applicant does not have an ongoing relationship with her uncle. She knew little of his service in the Pakistani government or current circumstances until

prompted by the security investigation. Additionally, her parents also do not maintain a relationship with her uncle. Her ties to her uncle are infrequent, and all of the above mitigating conditions are applicable to SOR ¶ 1.d.

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern regarding foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following are potentially applicable:

(d) Participation in foreign activities, including but not limited to:

(2) Otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

Applicant stated during her background interview that she would not participate in anything that negatively impacted Pakistan. If established, her refusal to serve the interests of the United States over another country raises potential concerns of foreign preference. However, in the background interview and subsequently, Applicant repeatedly sought to clarify that her loyalty rested with her family and the United States.

As discussed above, I find that Applicant's statements reflect her strong bonds of affection toward her parents and sisters, rather than the country of Pakistan and do not establish a foreign preference security concern. AG ¶ 9 and the specific security concerns listed in AG ¶ 10(d)(2) are not applicable and SOR ¶ 2.a has not been established.

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 have incorporated my comments under Guideline B and Guideline C in my whole-person analysis.

Applicant has lived in the United States since 2009. Her husband is a U.S. citizen and they have two young children who are U.S. citizens. She is committed to raising her family in the United States. Numerous character references testified about her strong commitment to her family, work and community.

Applicant also has a close relationship with her parents and two sisters in Pakistan. She traveled to Pakistan to care for her mother during cancer treatment in 2020 and has provided financial support when needed. She is also in the process of having her parents move to the United States, but was unable to state when that would occur. Her connections to and support for her family in Pakistan exemplify strong character traits of loyalty to family.

While there is nothing unusual about her relationship with family members in Pakistan, her present circumstances are such that she could be placed in an untenable position of having to choose between the interests of a loved one and the United States. "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." See ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Based on the facts and circumstances before me, concerns of undue foreign influence persist.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge