



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01080
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 14, 2022. On July 6, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons alleging security concerns under Guideline B. The DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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), which became effective on June 8, 2017.

Applicant answered the SOR on July 25, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 30, 2023, and

the case was assigned to me on February 29, 2024. On March 15, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on April 12, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence other than one document attached to his response to the SOR. DOHA received the transcript (Tr.) on April 24, 2024.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Pakistan. The request and supporting documents were not admitted in evidence but are attached to the record as Government Exhibit 3. I took administrative notice as requested by Department Counsel. In addition, I *sua sponte* took administrative notice of the facts set out in the U.S. Department of State Fact Sheet on Relations with Pakistan, found at www.state.gov/countries-areas/pakistan, (attached to the record as Hearing Exhibit I) without objection. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact.

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.d, and 1.g-1.i. He denied the allegation in SOR ¶ 1.f. He admitted the allegation in SOR ¶ 1.e in part and denied it in part. I granted Department Counsel's motion to withdraw SOR ¶ 1.f. Applicant's admissions are incorporated in my findings of fact.

Applicant is a 54-year-old employee of a defense contractor. His employer is a large U.S.-based company with world-wide activities. If he obtains a security clearance, he will work with the Department of Defense to develop artificial intelligence programs. (Tr. 63-64)

Applicant was born in Pakistan, came to the United States in 1991, and became a U.S. citizen in July 1999. He has never renounced his Pakistani citizenship. (Tr. 19) He attended a U.S. university, where he obtained a bachelor's degree in May 1995 and a master's degree in May 2008. He has worked for his employer since November 2000 and is now an associate partner in the company. (Tr. 23) He lived in Pakistan from 2009 to 2012 and 2015 to 2017, managing the business for his U.S. employer. (Tr. 21)

In April 2004, Applicant married a native of Pakistan who is now a dual U.S.-Pakistani citizen. His wife works in the United States as a substitute teacher. (Tr. 47) His daughter is a native-born U.S. citizen. His son is a dual U.S.-Pakistani citizen, because he was born in Pakistan and his parents were U.S. citizens when he was born. His mother and three sisters are natives of Pakistan and are now naturalized U.S. citizens. His brother, mother-in-law, and sister-in-law are citizens and residents of Pakistan. His sister-in-law's husband is a colonel in the Pakistani military.

Applicant's wife and children vacationed in Pakistan for about three weeks in 2019 and 2021. (Tr. 46) His wife traveled alone to Pakistan in January 2023 for a nephew's wedding. (Tr. 47)

Applicant telephonically talks briefly with his mother-in-law about once every three months. His wife talks to her mother two or three times a week. (Tr. 26)

Applicant's brother owns several businesses in Pakistan but is not active in them because of his poor health. Applicant talks to his brother about twice a month to check on his health. (Tr. 30) He visited his brother in Pakistan in November 2022, in connection with a vacation trip to Dubai. (Tr. 45)

Applicant speaks with his sister-in-law only on special occasions, two or three times a year. His wife talks to her once or twice a week. (Tr. 32) He has no relationship with his sister-in-law's husband, who is a colonel in the Pakistani Army, and he does not know anything about the colonel's duties. (Tr. 34, 66)

Applicant's brother-in-law resided in Pakistan until recently and was employed at the U.S. Embassy in Pakistan for 20 years. His brother received a decoration upon his departure and received a flag that had been flown over the U.S. Embassy in Islamabad. He now lives in the United States and has a green card. (Tr. 36-37)

Applicant has two friends who are citizens and residents of Pakistan. Both friends have worked for Applicant's employer for many years, and they talk quarterly on business matters. (Tr. 38-42)

In April 2017, Applicant acquired an interest in undeveloped residential property in Pakistan. He purchased it for about \$28,000, and it is now worth about \$40,000. (Tr. 41) The property is controlled by the Pakistan Defence¹ Housing Authority. Applicant explained that the Housing Authority owns the real estate throughout Pakistan, and Pakistani people buy property through the Housing Authority because it is the safest way to buy property, as compared private companies who "take your money and run away." (Tr. 62) He purchased the interest in the property because his wife has expressed interest in living in Pakistan after he retires. (Tr. 48) He does not expect to retire for another eight to ten years. (Tr. 68) He has not been allocated a specific plot of land. (Attachment to SOR Answer) The plots are small, about 500 square feet. (Tr. 51) He explained that his wife is interested in living in Pakistan, where she can have an easier life with maids and drivers, but he and his children are not interested in moving back to Pakistan. (Tr. 53, 67)

Applicant's assets in the United States are his home, which he purchased for about \$200,000 in August 2021, a car leased in his wife's name, a bank account with a balance of about \$10,000, and a retirement account worth about \$56,000. He earns \$19,500 per month before taxes and contributes to his retirement account. (Tr. 54-55) He has no assets in Pakistan except for the property interest described above. (Tr. 56)

¹ Pakistan uses the British spelling of "defense."

Applicant does not have a Pakistani passport. He uses his U.S. passport whenever he travels. He has a National Identity Card for Overseas Pakistanis (NICOP), which allows him to enter and leave Pakistan without a visa. (Tr. 58) His son also has a NICOP because he was born in Pakistan.

I have taken administrative notice that Pakistan is a parliamentary federal republic with whom the United States has had diplomatic relations since 1947. The parliament elected a new prime minister and head of government in April 2022. The election appears to have been conducted fairly and in accordance with the Pakistani constitution.

Terrorist attacks in Pakistan are a continuing threat and have targeted U.S. diplomats and diplomatic facilities. Terrorism increased in 2022. Pakistan has taken some action against terrorism, but its implementation of United Nations sanctions against terrorist entities has been uneven. The United States continues to urge Pakistan to take decisive action against terrorist groups. The Department of State travel advisory for travel to Pakistan is Level 3 (reconsider travel due to terrorism).

The United States is Pakistan's largest export market, importing more than \$5 billion in Pakistani goods in 2021. The United States has also been a leading investor in Pakistan for the past 20 years. However, Pakistan needs to strengthen its business regulation, including intellectual property protection.

Pakistan has a poor human-rights record and suffers from wide-spread government corruption. U.S. civilian assistance to Pakistan has focused on several areas, including governance, the rule of law, treatment of refugees, law enforcement, and countering infectious diseases such as COVID-19.

Pakistan is a nuclear-armed country. There have been several recent instances of illegal efforts by "front companies" and U.S. citizens to export sensitive equipment, information, and technology from the United States to nuclear research agencies in Pakistan.

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* 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 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* at 531.

Analysis

Guideline B, Foreign Influence

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). 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 ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

The following disqualifying conditions 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;

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;

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

AG ¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could

subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a), (d), (e) and (f) all 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”) Applicant’s family connections and friends are sufficient to raise AG ¶ 7(a), (d), and (e). The current value of his interest in undeveloped property is sufficient to constitute a “substantial” financial interest within the meaning of AG ¶ 7(f)

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). Although Applicant has no personal connection with the Pakistani colonel married to his sister-in-law, an applicant’s ties, either directly or through a family member, to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. *See, e.g.*, ISCR Case No. 08-10025 at 2 and 4 (App. Bd. Nov. 3, 2009) (Applicant’s brother was a high-level foreign government official); ISCR Case No.11-04980 at 2 and 6 (App. Bd. Sep. 21,2012) (Applicant’s sister-in-law was married to a retired high-ranking official in a foreign army);and ISCR Case No. 11-12632 at 2 and 5 (App. Bd. Feb. 2, 2015) (Applicant’s niece was an employee of a high-ranking foreign government official).

Based on the evidence set out above, I conclude that the disqualifying conditions in AG ¶ 7(a), 7(d), 7(e), and 7(f) are established. 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;

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;

AG ¶ 8(a) is not established. Applicant's continuing contacts with his brother and two business associates in Pakistan preclude a finding that it is unlikely that he will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government.

AG 8(b) is established. Applicant and his immediate family have some cultural attachment to Pakistan, but no feelings of allegiance to the government. Applicant has worked for a U.S.-based employer for 20 years. His wife, children, and mother are citizens and residents of the United States. One of his brothers worked at the U.S. Embassy in Pakistan for 20 years, was recognized for his loyalty and service to the United States, has moved to the United States, and intends to become a U.S. citizen. The desire of Applicant's wife to live in Pakistan after he retires raises some concern, but Applicant does not share her desire. Even if he acquiesces in his wife's desire, it will not occur until he retires and no longer has access to classified information, which likely will not occur for at least ten years.

AG ¶ 8(c) is established for Applicant's contacts his sister-in-law's spouse, a Pakistani colonel, with whom he has no contact. It is established for his mother-in-law and his sister-in-law, with whom he has only casual and infrequent contacts. It is not established for his two business associates in Afghanistan, with whom he has regular and substantive contacts.

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 sincere, candid, and credible at the hearing. He has affection for Pakistan but, based on his business experience, he understands its shortcomings. 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 his family and economic connections to 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.e:	For Applicant
Subparagraph 1.f:	Withdrawn
Subparagraph 1.g-1.i:	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.

LeRoy F. Foreman
Administrative Judge