



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 12-07667
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Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

12/12/2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his ties to family members and associates who are citizens of and reside in Pakistan. However, he failed to mitigate the security concerns raised by his renewal and possession of a Pakistani passport, two years after becoming a U.S. citizen. Clearance is denied.

On March 7, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for his work as an employee of a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information.¹ On August 6, 2012, DOHA issued to

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines² under Guideline B (foreign influence) and Guideline C (foreign preference).

On August 24, 2011, Applicant responded to the SOR (Answer) and requested a decision without a hearing. On August 31, 2011, Department Counsel requested a hearing.³ Department Counsel was ready to proceed on September 26, 2012, and the case was assigned to me on October 12, 2012. A hearing was held on November 14, 2012. DOHA received the transcript of hearing (Tr.) on November 26, 2012.

Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. The Government also asked that administrative notice be taken of certain facts germane to the issues presented by the pleadings. I granted that request and admitted, as Hearing Exhibit (Hx.) I, Department Counsel's five-page memorandum, supported by ten enclosed documents (Tr. 15 - 27). Applicant testified in his own behalf, but proffered no documentary information. At the close of the hearing, I left the record open to receive from Applicant additional relevant information. (Tr. 72 - 73) The record closed on December 7, 2012, when I received Applicant's timely post-hearing submissions. They have been admitted without objection as Applicant's Exhibits (Ax.) A - H.

Findings of Fact

Under Guideline B, the Government alleged that Applicant's father is a citizen of Pakistan residing in the United States (SOR 1.a); that his mother is a dual citizen of Pakistan and the United States residing in the United States (SOR 1.b); that his aunt, to whom Applicant has sent about \$1,000 since May 2010, is a citizen and resident of Pakistan (SOR 1.c); that his cousin, to whom he has sent about \$900 since May 2010, is a citizen and resident of Pakistan (SOR 1.d); that a friend, to whom Applicant sent about \$1,000 in 2008, is a citizen and resident of Pakistan (SOR 1.e); that Applicant's wife, whom he married in Pakistan in May 2010, is a citizen of Pakistan residing with him in the United States (SOR 1.f); and that Applicant's mother-in-law and father-in-law are citizens and residents of Pakistan (SOR 1.g). Applicant admitted, with explanation, all of these allegations. (Answer)

Under Guideline C, the Government alleged that Applicant possesses a Pakistani passport that is valid until December 31, 2013, and that he obtained that passport after becoming a naturalized U.S. citizen and receiving a U.S. passport (SOR 2.a). Applicant also admitted, with explanation, this allegation. (Answer). Applicant's admissions are incorporated in my findings of fact. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ See Directive E3.1.7.

Applicant is a 29-year-old dual citizen of the United States and Pakistan. He was born in Pakistan and emigrated to the United States with his family in 1998, when he was about 15 years old. He became a U.S. citizen in December 2005 and received a United States passport in April 2006. At the time of his naturalization, Applicant held an active Pakistani passport, which he had renewed in 2002 to travel abroad for a one-month religious pilgrimage. At the behest of his mother, he again renewed his Pakistani passport on January 1, 2007. It expires at the end of 2013.

In March 2011, the U.S. military conducted a pre-deployment screening of Applicant for potential counterintelligence concerns as part of his employment as a translator. At that time, Applicant stated he would relinquish the passport after his screening was complete. When he was interviewed a few days earlier by an investigator from the Office of Personnel Management (OPM), he stated his intent to relinquish his foreign passport after screening. He also stated that he had no plans to use his Pakistani passport in the future. At his hearing, Applicant testified that he relinquished his foreign passport to his security officer in Afghanistan when he arrived there in April 2011. He thought he would be able to relinquish it at his employer's headquarters in the United States before he deployed, but nobody asked for it until after he arrived in Afghanistan. Other than travel to Pakistan for his wedding in April 2010, for which he used his U.S. passport, the only foreign travel he has undertaken since he became a U.S. citizen has been government-sponsored travel to Afghanistan. Applicant has used only his U.S. passport since becoming a U.S. citizen. (Answer; Gx. 1; Gx. 3; Gx. 4; Gx. 5; Tr. 33 - 34, 61 - 62, 74 - 85)

Applicant was given additional time after the hearing to provide relevant information about his foreign passport. He was specifically advised that the status of his Pakistani passport should be documented in his post-hearing submissions. His post-hearing submissions contain no information that corroborates the status of his foreign passport. (Ax. A - H; Tr. 74 - 76, 86 - 87)

Applicant graduated from high school in the United States in 2002. After working in a variety of jobs, and after he obtained U.S. citizenship, he joined the United States Marine Corps in May 2007. He initially was assigned as a rifleman; however, in addition to his acquired fluency in English, Applicant speaks two languages indigenous to Pakistan and parts of Afghanistan. The Marines sent Applicant to the Defense Language Institute in Monterey, California, where he was trained in a third Pakistani language. Applicant deployed to Afghanistan for combat missions from November 2008 until May 2009. He has held a security clearance without incident since he enlisted in the Marines in 2007, and after he was honorably discharged in February 2011. He did not want to leave the Marines when he did, but decided not to re-enlist when it became clear his unit would not again be deployed to Afghanistan and that he would not qualify for the Marine Corps special warfare program. (Gx. 1; Gx. 3; Gx. 4; Tr. 66 - 71, 74)

Applicant is proud to have been the first in his family to serve in the military. (Tr. 74) His service as a Marine was honorable, as shown by his receipt of the Marine Corps Good Conduct Medal, a Sea Service Deployment Ribbon, the Afghanistan Campaign

Medal with Bronze Service Star, the Global War on Terrorism Service Medal, the National Defense Service Medal, and the NATO Medal for ISAF Afghanistan. Applicant also qualified as a marksman. (Ax. A) After leaving the Marines as a lance corporal (E-3), Applicant continued to distinguish himself in his current job as a translator and cultural expert in support of U.S. military units in Afghanistan. He has been living and working in that capacity in Afghanistan since April 2011. Military officials and civilian supervisors with whom he has worked in Afghanistan uniformly praise Applicant for his dedication, his reliability, and his linguistic and cultural expertise. Additionally, Applicant's tactical proficiency in the field, carried over from his Marine Corps experience, and his personal courage under fire while on patrol with military units in Afghanistan, have earned him the respect of his military counterparts. They view him as an integral and valued part of their combat mission efforts. (Gx. 4; Ax. B - H; Tr. 34 - 39)

Applicant's father was a citizen of Pakistan. He was estranged from Applicant for several years, and lived in the U.S. apart from his family until returning to Pakistan. He died there in 2011. Applicant's mother is a naturalized U.S. citizen who still holds Pakistani citizenship and a Pakistani passport. She travels to Pakistan about every other year to visit family. As of this hearing, she was in Pakistan where she will stay until the end of 2012. However, her principal residence is with Applicant in the United States. (Answer; Gx. 1; Gx. 4; Tr. 30, 57, 58)

Applicant's wife is a Pakistani citizen. As is common in Pakistani society, this was an arranged marriage his mother presented to him and to which he agreed. Applicant and his wife now have a three-month-old child. Applicant also has a 20-month-old child with a former girlfriend, an American citizen who was in the U.S. Navy when they were together. Applicant provides financial support for the child and his mother. Applicant's wife lives in the United States with him and their child. (Answer; Gx. 1; Gx. 3; Gx. 4; Tr. 32 - 33, 41 - 44, 60)

Applicant and his wife have relatives who are citizens of and reside in Pakistan. His relatives and in-laws in Pakistan live in the eastern half of the country near the border with India. None of Applicant's family in the U.S. or in Pakistan have ever been employed by or associated with the government of Pakistan. (Tr. 63 - 64, 71) Applicant's father-in-law and mother-in-law are Pakistani citizens who reside in Pakistan. He is a jeweler and she is a housewife. Applicant rarely speaks with them directly, but his wife speaks with them frequently, sometimes daily. (Answer; Gx. 4; Tr. 46) Applicant's wife also has four brothers and two sisters. They are all citizens of and reside in Pakistan. They range in age from 4 to 23 years of age, and Applicant has no direct contact with them. (Tr. 46 - 48)

Applicant earns in excess of \$100,000 annually in his current job. However, he is also relied on to support his wife and child, his ex-girlfriend and their child, his mother, and a brother and niece who live with him in the United States. He also provides needed assistance to his aunt and cousin in Pakistan. Applicant's aunt (his mother's sister) is a citizen of and resides in Pakistan with her two adult daughters. His aunt and one of her daughters have health problems that prevent them from working outside the

home. The other daughter cares for her mother and sister. Since 2010, Applicant has provided about \$1,000 in financial support. He and his mother have both sent his aunt money when needed for medicine and other essentials. Otherwise, Applicant has no contact with his aunt. (Tr. 31, 54 - 57)

Applicant has a childhood friend in Pakistan to whom Applicant sent about \$900 in 2008. The money was sent to help pay a college admissions fee and other expenses related to his education. Applicant's friend now works for a mobile communications company in Pakistan. They speak by phone about once every three months and have more frequent contact through email and social media. Applicant has not provided any other financial assistance to his friend since 2008. (Answer; Gx. 3; Gx. 4; Tr. 32, 48 - 50)

Applicant also has a 24-year-old cousin in Pakistan. Because he is not well-educated, he sometimes has difficulty finding work. His father, Applicant's uncle, died when the cousin was a teenager. His cousin is not married and must support his mother and younger siblings. Since May 2010, and as recently as October 2012, Applicant has sent his cousin financial assistance totaling more than \$900 to help support his cousin's family. Otherwise, he has little contact with his cousin. (Answer; Gx. 3; Gx. 4; Tr. 32, 50 - 52)

I take administrative notice of the following facts contained in Hx. I:

Most of Pakistan's western border abuts Afghanistan. To the southwest, Pakistan shares a border with Iran. Extensive terror networks operate along the border with Afghanistan in the Federally Administered Tribal Areas (FATA) along the central Afghanistan border, in the Khyber Pass region in northwest Pakistan, and in Balochistan Province in southwest Pakistan. Chief among these terror networks are the Taliban, the Haqqani Network, and al-Qaeda. They operate in many cases without meaningful interference from the Pakistani government, and their activities consist of anti-U.S. and anti-coalition military operations across the border into Afghanistan. The FATA, and other areas mentioned above, provide safe havens from which terrorists have been able to plan and launch attacks on U.S. and coalition troops and interests in Afghanistan. Bombings and other acts of terror also have been reported throughout Pakistan, but the main focus of terrorist activity in Pakistan consists of attacks in urban areas, such as the capital city of Islamabad. Because of this information, the U.S. Department of State has issued numerous travel advisories and warnings to U.S. citizens considering traveling to Pakistan.

The United States and Pakistan have had diplomatic relations since Pakistan obtained its independence from Great Britain in 1947. The countries' interests have been in general agreement for much of that time. Since 2001, Pakistan has helped the U.S. in its global war on terrorism and has helped capture hundreds of Taliban and Al-Qaeda personnel. However, as noted, efforts to deny areas adjacent to Afghanistan as safe havens for terrorist organization have not been as effective as the U.S. would like. Another issue related to terrorist activity in Pakistan is the fact that Pakistani

government and military entities have committed numerous human rights violations in the name of counter-terror operations and investigations. Extra-judicial killings, arbitrary arrests without access to due process, and other human rights problems are commonplace.

Finally, I take notice of the fact that the Islamic Republic of Pakistan is a federal republic made up of an executive, a legislative, and a judicial branch, whose powers and limitations are contained in a national constitution. The legislature is comprised of representatives in a bicameral parliament chosen through open elections from a multi-party system. A president and prime minister, and appointed cabinet members make up the head of the executive branch. Supreme court justices are appointed by the executive to oversee a common law legal system influenced by Islamic Sharia law.⁴

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to

⁴ This information was not contained in Hx. I. I obtained this information *sua sponte* from the CIA World Factbook page regarding Pakistan at www.cia.gov.

⁵ See Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Foreign Influence

The facts established by Department Counsel's information and by Applicant's admissions raise security concerns about Applicant's personal relationships and other interests in Pakistan. As stated in AG ¶ 6,

[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

More specifically, available information requires application of the following AG ¶ 7 disqualifying conditions:

(a) contact 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;

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing 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.

Pakistan is an ally of the United States and is governed through a democratic system modeled after Great Britain and the United States. Nominally an open society with an independent judiciary, the reality is that terror groups in the western regions of Pakistan have had a destabilizing influence on large parts of the country, mostly along the to the west in the FATA, Khyber Pass and Balochistan regions. Although not state-sponsored, they have been able to operate against U.S. persons and interests in Pakistan and against U.S. and coalition military forces across the western border in Afghanistan. Because those groups create a heightened risk of violence against U.S. interests, the presence of persons in Pakistan with whom Applicant has close personal ties of friendship and affection is a security concern under Guideline B.

Applicant lives in the United States with his mother and wife, both of whom have Pakistani citizenship. His father, who was also a Pakistani citizen living in the United States, is now deceased. Applicant's mother clearly has influence over him, as shown by his willingness to forego a relationship with the American mother of his older child in favor of a customary arranged wedding to his Pakistani wife. Additionally, he and his mother provide some financial support to Applicant's aunt and her children in Pakistan. Applicant has also provided some financial support to a cousin who has had trouble finding sufficient work to support his mother and siblings. Finally, Applicant made a one-time financial gift to a childhood friend in 2008 to help the friend matriculate at a Pakistani university.

Of all his foreign associations, Applicant has the most frequent contact with his wife and mother by virtue of the fact they live with him. He also has contact with his childhood friend in Pakistan through phone calls every three months and, more often, through social media. Applicant does not have contact with his cousin or with his wife's family (parents and siblings) in Pakistan. However, by virtue of the familial relationship with his cousin, and his marital relationship with his wife, those ties are presumed to be close. Additionally, his relationship with a childhood friend in Pakistan is also deemed close by virtue both of his willingness to help the friend pay for college admission, and his regular contact with that friend.

By contrast, Applicant's ties to his mother and wife pose little risk insofar as both reside in the United States. Also, although terrorist groups have been known to operate throughout Pakistan, Applicant's relatives and friends in Pakistan live in areas to the east of most of the terrorist activity in that country. Further, none of his family or friends

there is connected in any way with the Pakistani government, and it does not appear that any of them are aware of what Applicant does for a living or that he has a security clearance. Finally, Applicant served in the U.S. military, and he has had an established life in the United States since he was 15 years old. He has no foreign assets, he has two children born in the United States, and has only traveled back to Pakistan once since becoming a U.S. citizen. These facts tend to show that his loyalty lies with the United States and that he would not be adversely influenced by pressure that may be exerted on his aunt, cousin, and friend in Pakistan. Accordingly, I conclude the record supports application of the following AG ¶ 8 mitigating conditions:

(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.;

(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

(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.

On balance, he has mitigated the security concerns about possible foreign influence.

Foreign Preference

Applicant renewed his Pakistani passport in 2007, after he became a U.S. citizen and received a U.S. passport. The foreign passport is valid until 2013. Although he has never used that passport, his renewal is sufficient to raise a security concern about foreign preference. That concern is expressed at AG ¶ 9, as follows:

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 be prone to provide information or make decisions that are harmful to the interests of the United States.

More specifically, available information requires application of the disqualifying condition at AG ¶ 10(a):

exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family

member. This includes but is not limited to: (1) possession of a current foreign passport.

In response, Applicant claimed that he relinquished his Pakistani passport to his security officer in Afghanistan after he arrived there in April 2011 to begin his work as a translator. If this fact is established, Applicant could benefit from the mitigating condition at AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). However, I conclude Applicant has not met his burden in this regard. Possession of a foreign passport in addition to a U.S. passport allows individuals to travel outside the purview of the U.S. government. Such conduct is not illegal; however, it has security significance when an individual with access to classified information is able to travel in and out of the United States as a citizen of another country. The Government's compelling interest in safeguarding classified information places a significant burden on applicant's to corroborate claims in support of mitigating conditions.

I found Applicant to be credible and straightforward in his testimony about his passports and other issues in this case. Nonetheless, he had ample opportunity to produce information documenting his claim that his Pakistani passport is no longer in his possession. I specifically conveyed to him at the hearing the need to provide that information. Because Applicant did not document the status of his Pakistani passport, I conclude that AG ¶ 11(e) does not apply, and that he has not mitigated the security concern under this guideline.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B and C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult whose family relies on him almost exclusively for financial support using his salary as a defense contractor. He is a solid family man who respects his cultural and religious traditions. He has been a hardworking, contributing member of U.S. society since he arrived in this country as a teenager. He also proudly and honorably served in the United States Marine Corps, deploying for combat operations in Afghanistan. He has continued to assist the war effort there as a civilian translator assigned to accompany U.S. military units on combat patrols and other missions. In that capacity, he has distinguished himself through his linguistic and cultural expertise, and through his reliability and personal courage.

The Guideline B security concerns about Applicant's foreign associations and ties of affection are effectively overcome by all of the foregoing. But as to Guideline C, the available positive information about Applicant's suitability for a security clearance is not sufficient, absent corroboration of his claim that he has relinquished his foreign passport, to mitigate the adverse security concerns about this circumstance. There has been no misconduct here and there is nothing inappropriate or illegal about Applicant's possession of a foreign passport. However, the security concern about this issue is

clear, and Applicant has not adequately responded to it, despite having additional time to do so after the hearing. Accordingly, reasonable doubts remain about possible foreign preference by the Applicant. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the individual.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge