



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



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

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: Paula Phinney, Esquire

04/08/2013

**Remand Decision**

MALONE, Matthew E., Administrative Judge:

Based on a review of the record, which now includes a timely post-hearing submission not previously received by the Defense Office of Hearings and Appeals (DOHA) Hearing Office, Applicant’s request for a security clearance is granted.

On March 7, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his work as an employee of a defense contractor. After reviewing the results of the ensuing background investigation, the Department of Defense (DOD) was unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information,<sup>1</sup> and issued to Applicant a Statement of Reasons (SOR) alleging facts

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

which raise security concerns addressed in the adjudicative guidelines<sup>2</sup> under Guideline B (foreign influence) and Guideline C (foreign preference).

In response to the SOR, Applicant requested a decision without a hearing; however, Department Counsel requested a hearing,<sup>3</sup> which I convened on November 14, 2012. After the hearing, I left the record open to receive from Applicant additional information, in relevant part, about the status of his foreign passport. However, the submission received by the DOHA Hearing Office<sup>4</sup> did not address his foreign passport. I closed the record on December 7, 2012. On December 12, 2012, I issued an unfavorable decision, in which I concluded Applicant had mitigated the security concerns under Guideline B, but not Guideline C.

Applicant retained counsel and appealed my decision. Only my findings about Applicant's passport under Guideline C were addressed. On appeal, Applicant established he had, in fact, submitted information about his foreign passport. It is still not clear from the record why the DOHA Hearing Office did not receive that information.

On March 11, 2013, the DOHA Appeal Board remanded this matter to me "for further processing." I received the case file on March 22, 2013, but without the information to which the Appeal Board referred in its decision. I re-opened the record to receive that information. The record closed on March 27, 2013, when I received the following documents:

- a. Applicant's Declaration Renouncing his Pakistani Citizenship, dated October 19, 2011.
- b. Applicant's Affidavit regarding his Pakistani Passport, dated September 19, 2011.
- c. Applicant's Affidavit regarding his Pakistani Passport, dated October 19, 2011.
- d. Affidavit of Applicant's Facility Security Officer (FSO), dated November 8, 2011.
- e. Applicant's Affidavit regarding his Pakistani Passport, dated February 23, 2011.

These documents, and Department Counsel's email conveying her waiver of objection, are admitted collectively as Applicant's Exhibit (Ax.) I.

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<sup>2</sup> 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).

<sup>3</sup> See Directive E3.1.7.

<sup>4</sup> Admitted without objection as Applicant's Exhibits (Ax.) A - H.

## Findings of Fact

Under Guideline C, the Government alleged that Applicant possesses a Pakistani passport 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 admitted, with explanation, this allegation. (Answer). My findings of fact in my original decision are incorporated herein. Based on the information contained in Ax. I, I make the following additional findings of fact.

Applicant is a 29-year-old naturalized citizen of the United States. He was born in Pakistan and emigrated at age 15 to the United States in 1998. He became a U.S. citizen in December 2005 and received a U.S. passport in April 2006. At the time of his naturalization, Applicant also 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 has never been used and expires at the end of 2013.

Applicant disclosed his Pakistani passport when he submitted his application for clearance in March 2011. In February 2011, he provided an affidavit, ostensibly to his employer, disclosing his possession of that passport and expressing his willingness to relinquish it. In March 2011, the U.S. military conducted a pre-deployment screening of Applicant for potential counterintelligence concerns as part of his employment as an interpreter and translator with U.S. troops in Afghanistan. At that time, Applicant stated he would relinquish the passport after his pre-deployment 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. Applicant subsequently deployed to Afghanistan for work as an interpreter. Between September and November 2011, Applicant completed paperwork and affidavits showing he had renounced his Pakistani citizenship and relinquished his Pakistani passport to his FSO. (Ax. I)

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> 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

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<sup>5</sup> See Directive. 6.3.

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 interest<sup>6</sup> for an applicant to either receive or continue to 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.<sup>7</sup>

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.<sup>8</sup>

## **Analysis**

### **Foreign Preference**

Applicant renewed his Pakistani passport in 2007, after receiving U.S. citizenship and 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

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

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; AG ¶ 2(b).

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.

Applicant has corroborated his claim that he relinquished his Pakistani passport to his security officer in Afghanistan. With this fact established, Applicant benefits from the mitigating condition at AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). 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.

Applicant was credible in his testimony about his passports and other issues in this case. However, the Government's compelling interest in these matters required documentation of Applicant's actions to relinquish his passport. Having now been provided that information, AG ¶ 11(e) applies and Applicant has mitigated the security concern under this guideline.

### **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 2, Guideline C:           FOR APPLICANT

Subparagraph 2.a:                   For Applicant

### **Conclusions**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge

