



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



In the matter of:)	
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)	ISCR Case No. 12-09392
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

February 27, 2013

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 19, 2012. (Item 5.)¹ On August 31, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an Answer to the SOR on September 18, 2012, and requested a decision be made without a hearing. Department Counsel submitted a File or Relevant Material (FORM) to Applicant on November 19, 2012. Applicant received the FORM on December 18, 2012, and was given 30 days to submit any additional

¹Applicant re-signed Item 5 on February 13, 2012.

information. Applicant submitted additional information on December 20, 2012. (Applicant Exhibit A.)² He stated the following, “I am currently in AFGHANISTAN working for the US ARMY and as a federal contractor.” (Emphasis in original.) The case was assigned to me on January 11, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Pakistan. Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 42 and married. His wife is a permanent resident of the United States. He has two children, one of whom was born in Pakistan and is a permanent resident of the United States. His other child is a native-born American citizen. He is employed by a defense contractor, since January 2012, as a linguist, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted the factual allegations in the SOR, except for 1.g. Those admissions are findings of fact.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness. Applicant was born and raised in Pakistan, where he went to college. (Item 5.) He came to the United States in 2000, and was granted permanent resident status in 2004. He became a naturalized American citizen in November 2009. (Item 7 at 1.)

1.a. Applicant has five living brothers in Pakistan. One brother has passed away. Four of his brothers are construction contractors, one of whom owns a welding shop, and the fifth is the sales manager for a medicine company. (Item 8 at 5-6.)

1.b. Applicant has three living sisters in Pakistan. Two other sisters have passed away. His remaining sisters are housewives. (Item 8 at 6.)

²The signature block on Applicant Exhibit A is not that of the Applicant. However, a comparison of the written signature with that on the Applicant’s Answer shows this to be a typographical error.

1.c. Applicant's mother-in-law is a citizen and resident of Pakistan. His father-in-law has passed away. (Item 8 at 6.)

1.d. Applicant has two brothers-in-law. One is a citizen and resident of Pakistan. The second is a citizen of Pakistan, but he resides in the United States. (Item 8 at 7.)

1.e. Applicant has two sisters-in-law who are citizens and residents of Pakistan. (Item 8 at 6.)

1.f. Applicant has one nephew who is a citizen and resident of Pakistan. He has one additional nephew, who is a citizen of Pakistan, but is currently residing in the United Kingdom. (Item 8 at 7.)

1.g. Applicant denied maintaining close contact with several friends or associates who are citizens and residents of Pakistan. He stated in his Answer, "I only maintain close contact with my family & relatives." The evidence in the record is insufficient to support this SOR allegation, given Applicant's denial. Accordingly, this subparagraph is found for Applicant.

1.h. Applicant bought two pieces of property in Pakistan in about 2008. They are worth \$10,000 each. He has paid off one property and states that he transferred the other to a friend. (Item 8 at 7-8.)

1.i. Applicant purchased a shop in Pakistan in 2002 for \$11,000. He has paid off the loan for purchase of the shop, but has also transferred the shop to one of his brothers. Concerning this property, and the two discussed immediately above, "[Applicant] advised that he has no allegiance, preference or obligation to Pakistan due to these properties and would surrender these properties if required." (Item 8 at 8.)

1.j. Applicant sends money to his family every few months, usually \$100 to \$300. The total since 2005 is \$10,000 to \$15,000. (Item 7 at 1, 10.)

In January 2012, before he started his current employment, Applicant was unemployed and had a negative cashflow of over \$2,600 a month. (Item 7 at 26.) No information was submitted concerning his current financial condition.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

I also take administrative notice of the following facts concerning the Islamic Republic of Pakistan. The United States has had diplomatic relations with Pakistan since the latter's 1947 independence from the United Kingdom. The two countries'

common interest in peace and stability in South Asia has informed their relationship over the decades. Pakistan has been in the front line of counter terrorism efforts aimed at Al-Qa'ida and other networks. However, the U.S. Department of State has noted that terror networks continue to find safe haven in parts of Pakistan, despite the best efforts of Pakistani security forces. The State Department also warns U.S. citizens to defer travel to Pakistan based on security concerns. Finally, major human rights problems in Pakistan include extrajudicial killings, torture and disappearances committed by security forces, as well as by militant, terrorist and extremist groups, poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in persons.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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(c), 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 avoided drawing 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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. Security clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows:

Foreign 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.

Applicant has numerous family connections to Pakistan. In addition, he has financial interests in Pakistan which, according to the available evidence, outstrip any financial interests in the United States.

The following disqualifying conditions apply to this case based solely on the facts under AG ¶ 7:

(a) contact with a foreign family member . . . 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;

(b) connections to a foreign person . . . 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 . . . by providing that information; and

(e) substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to foreign influence or exploitation.

Applicant has not submitted any evidence to show that he has substantial family and financial ties in the United States that outweigh his relationship to Pakistan and his relatives there. Nor has he submitted any evidence showing that he does not have a conflict of interest between his loyalties to Pakistan, the country of his family and birth, and the United States. I have considered the fact that his immediate family lives here. However, that fact is insufficient to overcome the adverse inference raised by his substantial Pakistani connections.

Applicant has not provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 apply to this particular case, given his particular background:

(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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Based on my analysis of the available information, the Applicant has not overcome the adverse inference of his family members' presence in Pakistan, along with his financial interests there. Guideline B is found against the Applicant.

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 the circumstances. 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. Applicant may very well be a patriotic American citizen. He failed to present any evidence showing that his preference is for the United States and not Pakistan. It is Applicant's burden to make such a case, and he has not done so. Accordingly, I cannot find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has not mitigated the security significance of his foreign connections. He is not eligible for a security clearance.

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusory allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant.

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

WILFORD H. ROSS
Administrative Judge