



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



In the matter of:)
)
) ISCR Case No. 12-09445
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for foreign influence and financial considerations. His request for a security clearance is denied.

Statement of the Case

On August 14, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) setting forth security concerns under Guideline B (foreign influence) and Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ Applicant submitted a notarized Answer dated September 11, 2012, in which he admitted all but one allegation under Guideline B, and admitted all the allegations under Guideline F. Applicant also requested a hearing before an administrative judge. DOHA issued a Notice of Hearing on January 18, 2013, and I convened the hearing as scheduled on February 21, 2013. Department Counsel offered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5. Applicant testified and did not offer exhibits. DOHA received the transcript (Tr.) on February 27, 2013.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

Procedural Matters

Department Counsel requested I take administrative notice of information related to Pakistan. Administrative or official notice is the appropriate type of notice in administrative proceedings.² I take administrative notice of facts relating to Pakistan, set forth in Government documents provided by Department Counsel, and marked as HE I.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings and the record evidence, I make the following additional findings.

Applicant is 52 years old and was born in Pakistan. He received a bachelor's degree from a Pakistani government university. He was employed by a U.S. agency in Pakistan for several years, initially as a security guard and later in the communications department. He moved to the United States in August 1988. Applicant married a Pakistani citizen in Pakistan in 1997. They had two children born in the United States. His son died at about five years of age. His daughter is now 13 years old. He and his wife became naturalized U.S. citizens in August 2011. Applicant possessed a Pakistani passport, which was issued in 2002. It expired in 2007, and he has not renewed it. He last visited Pakistan in 2006. He has not served in the Pakistani military. (GE 1; Tr. 23-34, 103)

Between 2001 and 2008, Applicant worked for a flooring company. He worked as a taxi driver from 2008 to 2012. In July 2011, he accepted his current position with a defense contractor. He is employed as a limousine driver while awaiting his security clearance adjudication if he obtains a security clearance, he will work as a linguist and reside in Afghanistan. (GE 1; Tr. 34-37)

Foreign Influence

Applicant's parents are deceased. His father worked for the Pakistani government for 28 years, from 1949 to 1977. Applicant described his position as "military state deputy officer," but said it was not a military job.³ Applicant has three brothers, one sister, two sisters-in-law, and a brother-in-law who are citizens of Pakistan. All are residents of Pakistan, except one brother, who resides in New Zealand. His sister and his sisters-in-law are homemakers. He talks with his sister about once every two months. Applicant's brother-in-law is retired, after about 30 years as a broadcasting engineer. Applicant is unaware if he had contacts with the government in

² See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

³ Applicant described his father as working in a government office that deals with personnel stationed in military housing. (Tr. 97-98)

his position. Applicant testified that he does not have much contact with his brother-in-law, but in his January 2012 Standard Form Certification (GE 1, part 2), he stated that he talks to his brother-in-law monthly. (GE 1, parts 1, 2; Tr. 69, 73-99, 102)

Applicant's brothers range in age from 49 to 57 years old. His oldest brother is retired from a position in flight operations for an airline. Applicant characterized the airline as "semi-governmental" because the government has some involvement in its operation, but it is primarily privately owned. Applicant talks with his brother once per month. Applicant's second brother was a commissioned officer in the Pakistani air force. Applicant described his rank as group captain. He retired with about 25 to 30 years' service. He receives a government pension. Applicant speaks with him about once every three months by telephone. Applicant's third brother was a lieutenant colonel in the Pakistani army. He served in the military police for a short time, and then worked in food supply. He served for between 25 and 30 years, retired in 2008, and receives a pension. He moved to New Zealand two or three years ago. Applicant and this brother talk on Skype about once per month. Applicant saw his brothers during his most recent trip to Pakistan in 2006. (GE 1, parts 1, 2; Tr. 69, 73-100)

In about 2000 or 2001, Applicant had a property interest in Pakistan. His brother paid each sibling a share of the value of their father's property, after the father's death. Applicant received \$9,000. He used it to pay debts related to a hair salon he owned. He has no bank accounts, property, or other financial interests in Pakistan. Applicant last visited Pakistan in 2006. He plans to visit in the future, but currently has no funds available for travel. (Tr. 79-81, 89)

Financial Considerations

Applicant filed a Chapter 7 bankruptcy petition in May 2007. It included \$1.6 million in secured claims, including several mortgages, auto loans, and a line of credit. The petition also listed unsecured claims of more than \$152,500. Many of Applicant's debts stemmed from his purchase of a hair salon. He used a portion of the equity in his home to purchase the salon, and invested approximately \$265,000. He owned it for about eight months. He accrued significant debt and tried unsuccessfully to sell it. He eventually closed the business, and filed the bankruptcy petition. The petition was discharged in August 2007. (GE 2, 4; Tr. 37-43)

Applicant currently owes a total of \$10,419 in delinquent debt: two small debts of \$500 and \$137, and a student loan of \$9,782. The delinquencies appear in Applicant's credit reports of January, August, and November 2012. He testified his wife made a \$50 payment on the \$137 debt, or intended to do so. However, he did not provide supporting documentation showing payments on that debt, or the others. (GE 3, 4, 5; Tr. 45-47)

Applicant became responsible for a student loan when he co-signed on the loan for a friend. The friend started school, but then returned to Pakistan. Applicant has tried to reach his friend about payment. He also has contacted the friend's father in Pakistan and asked him to have his son call Applicant. However, his friend has not returned the

calls. As of 2007, when he filed his bankruptcy petition, the loan balance was \$6,400. The loan was not discharged in the bankruptcy. Applicant has been contacted by the lender. He agrees he is liable for the debt, but he has not made arrangements to pay the loan because he has no funds to do so. (Tr. 42-45)

In January 2012, Applicant had net monthly income of \$3,400. He estimated his expenses to be \$2,605. His monthly payments on two car loans and his credit cards total \$770. With a total monthly outlay of \$3,375, he had a net monthly remainder of \$25. His assets are two cars valued at \$13,500. Applicant testified that he is “trying to get above water.” He plans to pay the three outstanding debts with his increased salary as a linguist. (GE 1, part 2; Tr. 44)

The Islamist Republic of Pakistan (Pakistan)

Pakistan is a parliamentary federal republic in South Asia, with a population of more than 170 million. It held successful elections in February 2008 and has a coalition government. However, many parts of the country are affected by militancy and violent extremism.

Terrorist networks operate within Pakistan. Members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) region, in Balochistan Province, which borders Iran and Afghanistan, and in the Khyber Pakhtunkhwa in the FATA region. The FATA region is a sanctuary to al-Qaida and other extremist groups. The Haqqani Network also operates with impunity in Pakistan. On September 7, 2012, the United States formally declared the Haqqani Network a foreign terrorist organization.

The U.S. Department of State (DOS) defines terrorist safe havens as “ungoverned, under-governed, or ill-governed physical areas where terrorists are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security because of inadequate governance capacity, political will, or both.”⁴ The DOS concludes that, despite efforts by Pakistani security forces, groups including Afghan and Pakistani militants, foreign insurgents, and al-Qaida terrorists have safe haven in Pakistan, and train and operate there to plan attacks against the United States and its allies in Afghanistan. Taliban senior leaders also enjoy safe haven in Pakistan.

The Pakistani government has a poor human rights record. Reported violations include extrajudicial killings, torture and disappearances by security forces, lack of judicial independence, arbitrary arrest, honor crimes, wide-spread corruption, disappearance and imprisonment of political opponents, and trafficking in persons. The May 2012 *Human Rights Report* by the DOS notes that Pakistani domestic intelligence services monitored political activists, politicians, suspected terrorists, and the media. The DOS warns U.S. citizens to defer non-essential travel to Pakistan in light of the presence of terrorists who have attacked civilian and foreign targets. Credible reports

⁴ U.S. Department of State, *Country Reports on Terrorism 2011*, Chapter 5, Terrorist Safe Havens. (HE I)

indicate that authorities routinely used wiretaps, and intercepted and opened mail without requisite court approval.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. 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 are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B (foreign influence) and F (financial considerations).

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 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. Therefore, 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

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

⁵ Directive ¶ 6.3.

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all the disqualifying conditions, and find that the following are relevant to the case:

(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;

(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

(e) a 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 heightened risk of foreign influence or exploitation.

The mere possession of close family ties with a resident or citizen of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁹

Moreover, the country in question must be considered. In particular, the nature of its 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.¹⁰ Several terrorist networks operate within Pakistan, including the Taliban and al-Qaida. Terrorists have safe haven in Pakistan, where they train and plan attacks against the United States and its allies in Afghanistan. The threat of terrorism

⁹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

¹⁰ ISCR Case No. 07-02485 at 4 (App. Bd. May 9, 2008).

remains high. Further, Pakistan has a poor human rights record, including widespread corruption, torture by security forces, and disappearances and imprisonment of political opponents. The DOS notes credible reports that Pakistani authorities routinely used wiretaps, and intercepted and opened mail. American citizens with family members who are citizens or residents of Pakistan are at heightened risk of coercion, exploitation, or pressure.

Applicant has three brothers, one sister, two sisters-in-law, and a brother-in-law who are citizens of Pakistan. All are residents of Pakistan, except one brother, who lives in New Zealand. Several of Applicant's family members have contacts with the Pakistani government. One brother is a retired army officer, with 25 to 30 years' service. Another brother is a retired air force officer, also with 25 to 30 years' service. Applicant is in touch with his foreign family members once each month to once every few months. Applicant's relationship with his immediate family members in Pakistan, and his regular contact with them, creates a heightened risk of exploitation or coercion. Moreover, Applicant's ties of affection to his foreign family create a potential conflict of interest between his desire to protect them, if they were threatened or coerced by terrorists or extremists, and the obligation he would have to protect classified information, were he to hold a security clearance. AG ¶ 7(a) and (b) apply.

About 12 years ago, Applicant had a partial interest in property his father owned. When his father died, Applicant's brother paid Applicant and his siblings their proportionate shares. Applicant used the \$9,000 proceeds to pay debts related to his hair salon. He no longer has property or financial interests in Pakistan. Disqualifying condition AG ¶ 7(e) does not apply, and mitigation is not required.

I have considered the mitigating conditions under Guideline B (AG ¶ 8), especially the following:

(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.

Given Applicant's ties to immediate family in Pakistan, he could be placed in a position that could force him to choose between U.S. and foreign interests. His frequent contacts demonstrate that his ties to his foreign family are not minimal. Moreover, his family lives in a country where terrorists and extremists operate and target U.S. interests. Applicant's foreign relatives could be subject to coercion that could force him to choose between their interests and those of the United States. AG ¶ 8 (a) and (b) cannot be applied.

Mitigation under AG ¶ 8(c) is also unavailable. Applicant's contacts with his foreign family are frequent and ongoing. There is a rebuttable presumption that relationships with immediate family members, and with relatives of a spouse, are close.¹¹ Applicant has not rebutted that presumption about his relationships with his foreign family members.

Guideline F, Financial Considerations

AG ¶ 18 expresses the overall security concern about financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. . .

The evidence supports application of the following disqualifying conditions under AG ¶19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has \$10,419 in delinquencies, demonstrating an inability or unwillingness to meet his financial obligations. His previous bankruptcy and his current indebtedness also support of finding of a history of failure to meet his financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

¹¹ ISCR Case No. 01-03120 at 3 (App. Bd. Feb. 20, 2002).

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are not in the distant past, as more than \$10,000 remains unpaid. His inattention to his debts, even during the security clearance process when he was on notice that they were a concern, indicates that delinquencies may continue in the future. His failure to make attempts to resolve his debts by working with his creditors raises questions about his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) focuses on situations where conditions beyond an applicant's control affect his ability to meet his financial obligations. One debt comprises the bulk of Applicant's delinquencies: the student loan of almost \$10,000. This debt did not stem from conditions beyond Applicant's control. He decided to co-sign the student loan for a friend, knowing that he would be responsible for it if his friend did not pay. Other than trying to convince his friend to pay, he has no plan in place to resolve the debt, and no funds to do so. AG ¶ 20(b) cannot be applied.

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant used a legitimate avenue to resolve the debts related to his failed hair salon business when he filed for Chapter 7 bankruptcy protection. The petition was successfully discharged in 2007. However, since then, he knowingly co-signed a substantial student loan for a friend. His friend apparently has no intention to pay the debt. In the year since he has completed his security clearance application, Applicant has been aware that the debt is a security concern, but he has made no effort to work with the lender, or establish a payment plan. With a \$25 monthly net remainder, it is clear he does not have the funds to resolve it. In addition, Applicant has not taken steps to pay even the smallest SOR debt of \$137. An applicant must demonstrate reasonable efforts to resolve debts, and Applicant has not done so. AG ¶ 20(d) cannot be applied.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

In evaluating the whole-person, I considered several factors in Applicant's favor: He has been a U.S. citizen for 18 months; his wife and daughter are U.S. citizens; and he worked for the U.S. government in Pakistan in the 1980s. However, Applicant has immediate family members who are citizens and residents of Pakistan, two of whom have long-standing military ties. He keeps in touch with his foreign family, and there is no evidence indicating that this situation will change. These facts, along with the dangerous conditions in Pakistan, and the prevalence of terrorists and extremists who target U.S. interests, represent a heightened risk that has not been mitigated. In addition, Applicant is liable for almost \$10,000 in student loans, and with virtually no funds available to resolve the debt, he is at risk of exploitation.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts about his ability and willingness to protect the Government's interests.

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 as follows:

Paragraph 1, Guideline B:	AGAINST Applicant
Subparagraphs 1.a – 1.f	Against Applicant
Paragraph 2, Guideline F:	AGAINST Applicant
Subparagraphs 2.a – 2.d	Against Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge