



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



In the matter of:)	
)	
)	ISCR Case No. 12-10049
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Mark S. Zaid, Esquire

02/21/2013

Decision

CURRY, Marc E., Administrative Judge:

Given Applicant’s deep and longstanding relationships in the United States, he can be expected to resolve in favor of the U.S. interest any potential conflict of interest that may arise based upon his family ties to the country of Pakistan. Clearance is granted.

Statement of the Case

On September 25, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines 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).

Applicant answered the SOR on October 19, 2012, admitting subparagraphs 1.c and 1.d, and denying subparagraphs 1.a, 1.b, and 1.e. Also, he requested a hearing. On

November 29, 2012, I received the case assignment. DOD issued a notice of hearing on December 26, 2012, scheduling it for January 28, 2013. I held the hearing as scheduled. During the hearing, I received three Government exhibits, marked as Government Exhibits (GE) 1 through 3, and five Applicant exhibits, marked as Applicant Exhibits (AE) A through E. Also, I received the testimony of Applicant and four character witnesses, and took administrative notice, at Department Counsel's request, of the adjudicative facts set forth in 10 documents, marked as Hearing Exhibit (HE) I through X. DOHA received the hearing transcript (Tr.) on February 6, 2013.

Procedural Ruling

SOR subparagraph 1.a, as originally drafted, alleged that Applicant's parents are citizens of Pakistan who live part of the year in Pakistan. At the hearing, Department Counsel moved to amend SOR subparagraph 1.a to reflect the fact that Applicant's father is deceased. As amended, subparagraph 1.a reads as follows:

Your mother is a citizen of Pakistan who resides at least part of the year in Pakistan.

Applicant's counsel had no objection to the motion, and I granted it. Applicant then admitted to the amended allegation.

Findings of Fact

Applicant is a 58-year-old married man with three children, ages 21, 19, and 18. Applicant was born and raised in Pakistan. After graduating from college in 1984, he enrolled in a training program to be a pharmacist. Later that year, he decided to immigrate to the United States and pursue another course of study. By 1989, Applicant had graduated from a U.S. university, triple majoring in electrical engineering, computer science, and computer building. (Tr. 66) The year he graduated from college, he became a naturalized U.S. citizen. (GE 2 at 4)

After graduating from college, Applicant took a job as a computer engineer for a defense contractor, and he worked there from approximately 1990 to 1993. (Tr. 66) During this time, he was granted a security clearance. He has continuously held a clearance since then.

In 1993, Applicant changed jobs. He worked at this new job from 1993 to 1995. In 1995, Applicant and a coworker founded a start-up company that specialized in microchip development. (Tr. 43, 66) Their company has thrived. Currently, the company employs between 550 and 600 people and grosses approximately \$90 million to \$100 million annually. (Tr. 45) As Applicant is the company's president and chief operating officer, he oversees all aspects of the company's operations including contracts, accounting, human resources, quality management, and finance. (AE A)

Applicant owns approximately one-third of the company. Combined with his other assets of approximately eight to nine million dollars, Applicant's net worth is \$42 million. (Tr. 86) According to a former neighbor, who lived next door for 11 years, Applicant's business has had "a very positive impact on the local economy." (AE B at 2)

Applicant supports several local charities. Once, Applicant paid the entire amount of back taxes of a neighbor who had been rendered financially insolvent after surviving numerous surgeries and bouts of chemotherapy. (AE C at 3) According to Applicant's business partner:

he is a good guy and there's been a lot of times where there's been something come up or maybe we saw something in the newspaper where it said something about you know a person was injured or they had a terrible accident and [Applicant] would say, 'hey, let's send that person money, they're in kind of a bad situation.' (Tr. 50)

Over the years, Applicant and his business partner have occasionally gone fishing together, and have gone to parties together. (Tr. 45) Also, they have eaten dinner at one another's homes. (Tr. 46)

Applicant has an avid interest in historic preservation. For the past six years, he has served on the board of trustees of a local plantation. (AE E at 2) Through the efforts of Applicant and the other trustees, the community has preserved the plantation through fundraising, educational programs, and entertainment activities such as wine festivals and candlelight holiday tours. (AE E)

Applicant has been a naturalized U.S. citizen since 1989. (Tr. 68) In 1990, he got married. At that time, his wife was a Pakistani citizen and resident. In 1991, she immigrated to the United States and became a naturalized citizen in 1994. (Tr. 70) She is a homemaker.

All of Applicant's children were born and raised in the United States. Currently, they are attending state colleges. (Tr. 71) Each of his children has interned at his company at various times. Currently, his oldest son works part-time for the company as a web designer. (Tr. 46) None of Applicant's children speaks the Pakistani language fluently. (Tr. 47)

Applicant's mother lives half of the year in the United States and the other half in Pakistan. When she is in the United States, she lives alternately with Applicant's family and his brother's family.¹ (Tr. 73)

Applicant had a sister who was a citizen and resident of Pakistan. She passed away in 2010. (Tr. 67) Her husband, Applicant's former brother-in-law, is a secondary

¹Applicant's brother is a naturalized U.S. citizen. He immigrated to the United States before Applicant and sponsored Applicant.

school principal who continues to live in Pakistan. Applicant talks with him approximately three to four times per year. Typically these conversations occur when Applicant is keeping in touch with his mother when she is in Pakistan, and his former brother-in-law happens to be visiting her when Applicant calls. (Tr. 75-76)

Applicant's other two brothers-in-law are his wife's siblings. One of them lives in Pakistan. He is an accountant who is currently unemployed and attempting to develop his own business. (Tr. 78) Applicant's wife talks with this brother approximately once per month, and Applicant talks with him two or three times per year. (Tr. 79) Applicant's other brother-in-law immigrated to the United States approximately two-and-a-half years ago, and intends to become a naturalized citizen. (Tr. 80) He is a gas station attendant. (Tr. 80) He owns several properties in Pakistan and periodically returns to manage them. Most recently, he has been living in Pakistan for the past two months. When he is in the United States, he lives with Applicant and his family. (Tr. 81) Applicant has talked to him once since he returned to Pakistan. (Tr. 81)

Applicant has travelled to Pakistan approximately once every other year since immigrating to the United States. (Tr. 97) He last visited in April 2010 in order to see his ailing sister. (GE 2 at 10)

Approximately four or five years ago, Applicant and his wife went to a dinner party and met a Pakistani man who worked at the Embassy of Pakistan. (Tr. 88) At the end of the party, they exchanged contact information with the intention of getting together for dinner. Applicant and his wife did not follow up on their overture, and Applicant never saw the Pakistani Embassy employee again. (Tr. 88-90)

Applicant's nephew married a woman from Pakistan whose father was a retired general in the Pakistani army. Applicant met the retired general at his nephew's wedding in Pakistan approximately ten years ago. Over the years, Applicant met this individual approximately four or five times when travelling to Pakistan and once when the gentleman came to the United States. Applicant last saw him approximately five or six years ago. Applicant's nephew and his nephew's wife divorced approximately two years ago. Subsequently, neither Applicant nor anyone else in Applicant's family has had any contact with the nephew's former father-in-law. (Tr. 90-92)

Administrative Notice

Pakistan is a parliamentary federal republic. (HE IX at 1) Although it is ostensibly a U.S. ally in the fight against terrorism, several terrorist groups including, Al-Qa'ida, continue to operate in parts of Pakistan with impunity, and Taliban insurgents in the U.S.-led war in Afghanistan use Pakistan's northwest frontier province to organize, train, and regroup. (HE IX at 6) Generally, Pakistan has aggressively confronted terrorists it considers inimical to its interests, but has been lackadaisical in confronting terrorists whose operations are focused upon Afghanistan or India. (HE V at 4)

The U.S. Department of State defines terrorist safe havens as follows:

ungoverned, under-governed, or ill-governed physical areas where terrorist groups that constitute a threat to U.S. national security interests 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.²

The U.S. Department of State has concluded that Pakistan is a terrorist safe haven. (HE I at 1) The Haqqani Network, an extremist organization operating as a strategic arm of Pakistan's Inter-Services Intelligence Agency, actively conducts terrorist operations against U.S. troops in Afghanistan and against Afghan civilians. In May 2011, U.S. forces killed Osama bin Laden, mastermind of the 911 attacks and numerous other terrorist attacks around the world. He had been living in hiding in an affluent suburb of Islamabad, Pakistan's capital, in a home eight times larger than any homes in the community, reinforced by extraordinary security measures including 12 to 18 foot walls topped with barbed wire and two security gates. (HE VIII at 2)

Pakistan is a developing country. The military continues to have a pervasive influence on the government, and Pakistan's human rights record remains poor. The Pakistani government maintains several domestic intelligence services that monitor politicians, political activists, and journalists. (HE X at 1, 13, 14)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.

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."

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

²HE I at 1.

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

Pakistan is a haven for extremist, anti-American groups, including Al Qa’eda, which masterminded the 9/11 attack. Also, elements of Pakistan’s intelligence service are engaged in a proxy war with U.S. troops in Afghanistan, organizing and funding terrorist attacks. Contrary to the allegations set forth in subparagraph 1.d and 1.e, Applicant does not maintain contact with either “an associate who is the Naval Attache in the Embassy of Pakistan,” or with “an associate who is a Retired General in the Pakistani Army.” Although Applicant once met an employee of the Embassy of Pakistan at a dinner party, he never saw him again. As for the retired general, Applicant has not seen him since Applicant’s nephew and the general’s daughter divorced. I resolve subparagraphs 1.d and 1.e in Applicant’s favor.

Conversely, Applicant’s mother, a citizen of Pakistan, spends six months per year living in Pakistan. Also, both his deceased sister’s husband and one of his sister’s brothers live in Pakistan, and another brother-in-law splits time between living with Applicant and living in Pakistan. These relationships generate concerns under AG ¶ 7(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 risk of foreign exploitation, inducement, manipulation, or coercion.” Applicant’s relationship with his mother and his brother-in-law, both of whom split time living with him and living in Pakistan, also triggers the application of AG ¶ 7(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.”

Applicant only talks to his late sister’s husband when Applicant is calling his mother when she is visiting Pakistan, and his late sister’s husband happens to be at the home when Applicant calls. This occurs approximately three to four times per year. Applicant only talks to his wife’s brother living full-time in Pakistan approximately once or twice per month. 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,” applies to these relationships.

Applicant has only spoken with his other brother-in-law twice since he returned to Pakistan. However, while in the United States, this brother-in-law lives with Applicant. Consequently, AG ¶ 8(c) is inapplicable to this relationship.

Applicant’s mother and brother-in-law are in Pakistan approximately only six months per year. This fact has minimal probative value given Pakistan’s status as a terrorist haven and the propensity of its government to conduct domestic intelligence on its citizens. Consequently, 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 U.S.,” is inapplicable.

Applicant has lived in the United States for nearly 30 years. He became a naturalized U.S. citizen and graduated from a U.S. college in 1989, and he has held a security clearance since the early 1990s. Upon considering the testimony and affidavits of several current and former coworkers, friends, and neighbors, I conclude that Applicant has deep and longstanding relationships in the United States.

Applicant’s personal and career trajectory has epitomized the American dream. Specifically, since immigrating to the United States in 1985, he has changed careers, returning to college to obtain training as a computer engineer, and later, starting a company that over the years has grown into a multimillion dollar enterprise. In the process, he has enriched his community economically through the company, which employs between 550 and 600 people, has enriched the community culturally by working as a member of the board of trustees of a local plantation to preserve his community’s unique heritage, and has enriched the community charitably through his humanitarian endeavors. I conclude that although Applicant’s contacts with his relatives who split time between the United States and Pakistan creates “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,”³ there is “no conflict of interest, because he “has such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.”⁴

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

³AG ¶ 7(a).

⁴AG ¶ 8(b).

(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 discussed Applicant's favorable whole-person attributes in the Foreign Influence section of the Decision when I analyzed the ties that Applicant has developed with his friends, coworkers, and his community since immigrating to the United States. I conclude Applicant has mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant 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
Subparagraph 1.a - 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge