



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



In the matter of:)
)
) ISCR Case No. 12-10611
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/10/2013

Decision

WHITE, David M., Administrative Judge:

Applicant was born and raised in Pakistan. He served in the Pakistani Air Force for nine years, then was medically discharged. In 1986 he immigrated to seek U.S. employment on a tourist visa, then became a temporary U.S. resident in 1988 after qualifying as a “seasonal agricultural worker.” He became a naturalized U.S. citizen in 1999, and has been a taxi driver in a major city since then. His mother, three brothers, five sisters, and many in-laws are all resident citizens of Pakistan. His wife and two daughters are resident citizens of Pakistan, despite having been granted U.S. permanent resident status that has since lapsed. He failed to mitigate resulting security concerns. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on August 1, 2011.¹ On February 13, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference).² 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in an undated writing, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on June 7, 2013. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant received his copy of the FORM on July 4, 2013. He submitted no additional evidence, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on August 22, 2013.

Findings of Fact

Applicant is a 63-year-old employee of a defense contractor, where he was hired to work as a linguist two years ago. He has never held a U.S. security clearance. He completed high school in Pakistan in 1965. In 1966 he enlisted in the Pakistani Air Force, and served for nine years as a radio operator until being medically discharged for color blindness. He is married, and has three children ages 32, 22, and 20.⁵ Applicant admitted all of the factual allegations set forth in the SOR, with explanations.⁶ Applicant's admissions, including those made in his response to DoD Interrogatories and during counterintelligence screening,⁷ are incorporated in the following findings.

¹Item 5.

²Item 1.

³Item 4. He answered DOHA interrogatories (Item 7) at the same time. Pages 25-30 of Item 7 are misfiled additional pages of Applicant's SOR answer that should be attached to Item 4.

⁴The Government submitted eight Items in support of the SOR allegations.

⁵Item 5; Item 12.

⁶Item 4; Item 7.

⁷Item 6; Item 7.

Applicant was born and raised in northwest Pakistan. His father, who passed away in 1996, served in Pakistan's army as a signal operator for almost 20 years. At the time, it was under British control. In 1958 he left the army and worked as a salesman for a tea company until about 1975. Applicant's mother did not work outside their home. She lives in the family home in Pakistan with Applicant's youngest brother, who owns a small phone shop, and his wife. Applicant has three other brothers. One of them has become a naturalized U.S. citizen, and has worked as a contract linguist for U.S. forces in Afghanistan. In August 2011, Applicant said that the other two brothers had gone to the United Arab Emirates to work as truck drivers, but still considered themselves resident citizens of Pakistan. Applicant's five sisters are married resident citizens of Pakistan who do not work outside their homes. In his response to the SOR, Applicant said that his three brothers and five sisters are citizens of Pakistan and reside there because, "They are better off and happy to live there in our own native town." Applicant's brothers-in-law, sisters-in-law, and son-in-law, are also citizens of Pakistan and reside there. Applicant maintains regular contact with his mother and brothers, but only contacts his sisters and in-laws in case of a family problem or during his visits to Pakistan. None of his living relatives have any connection to Pakistani military or intelligence services.⁸

About a year after Applicant was discharged from the Pakistani air force in 1975, he moved to Oman to seek better employment opportunities. He worked there for ten years as a tradesman, truck driver, and restaurant manager. In 1986 he decided to move to the United States, and obtained a tourist visa on which he immigrated. He successfully applied to become a temporary U.S. resident in 1988 after qualifying as a "seasonal agricultural worker." He became a naturalized U.S. citizen in 1999, and has been a taxi driver in a major city since then.⁹

Applicant and his wife entered into an arranged marriage in 1978. Shortly thereafter, he returned to Oman to work. His wife stayed in Pakistan. Applicant first sponsored her and their three children to enter the United States in about January 2002. After three months, his wife and two daughters decided to return to Pakistan. His son remained with Applicant and has since become a naturalized U.S. citizen. One of his daughters married a medical doctor in Pakistan in 2006, and lives there with him. Her U.S. permanent resident status has since lapsed. Applicant again sponsored his wife and other daughter for permanent resident visas in 2007, but they again returned to Pakistan after about three months and his wife's U.S. resident status has lapsed. This daughter is attending medical school in Pakistan. Applicant said that she obtained U.S. citizenship and plans to return to live in the United States after she finishes her medical education. However, it is not clear when or how she could have qualified for or been granted U.S. citizenship during her short periods of actual residence here.¹⁰

⁸Item 5; Item 7.

⁹Item 5; Item 6; Item 7.

¹⁰Item 5; Item 7.

Applicant and his wife purchased a home in Pakistan where his wife and their student daughter still live. He said that the home is owned solely in his wife's name, although she has never worked outside their home or earned income. Applicant regularly sends funds to his wife and daughter to pay their living and medical school expenses in Pakistan, and lives in their home while visiting there. Applicant lives in a rented apartment with his son in the United States. He had some relatively small delinquent debts in 2011 that he could not afford to repay, and offered no evidence of any assets in the United States.¹¹

Applicant visited his wife and family in Pakistan, using his U.S. passport, for periods ranging from several weeks to several months in 2000, 2004, 2006, 2009, and 2011. During the last of those visits he obtained a Pakistani National Identification Card that is valid for seven years. The card allows him to enter and visit Pakistan without obtaining a visa, but does not confer any other rights or benefits to him. He considers himself solely a citizen of the United States, and surrendered his Pakistani passport upon obtaining U.S. citizenship.¹²

Applicant did not submit any 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. There is no evidence that he has served with U.S. forces overseas. He submitted no character references describing his judgment, morality, trustworthiness, integrity, 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 took administrative notice of the facts set forth in Department Counsel's request concerning the Islamic Republic of Pakistan, which are incorporated herein by reference.¹³ Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, and other militant extremist groups that generate instability and openly attack police, security, and military forces; as well as the local populace and U.S. persons and interests.

Policies

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 (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

¹¹Item 5; Item 6; Item 7.

¹²Item 7.

¹³Applicant did not object to the Administrative Notice request or dispute any facts set forth therein.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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. Department Counsel persuasively argued that substantial evidence in this case established three of them:

(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.

Pakistan has significant internal anti-western terrorism threats that operate openly contrary to U.S. interests. Accordingly, his close family connections in that country have more potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (e), than would similar connections in many other countries.

Applicant's mother, wife, two daughters, eight siblings, and many in-laws are resident citizens of Pakistan. His wife and daughter, who are financially dependent on him, live in the home they own in northwest Pakistan - an area particularly susceptible to militant, insurgent, and terrorist presence and activity. He has an entirely legitimate, serious interest in the welfare of his family members in Pakistan, creating the potential for conflict of interest under AG ¶ 7(b). Although the value of the home is not established in the record, it is Applicant's immediate family's only significant asset and accordingly constitutes a substantial foreign interest for purposes of AG ¶ 7(e).

These facts meet the Government's burden of production by raising all three of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and connections with Pakistan through his relatives who are citizens and residing there shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (e) security concerns are:

(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;

(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; 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.

Considered in light of the substantial anti-western terrorism threat and impending departure of most NATO military forces from the region, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his family ties there. He has close relationships with family members now living in Pakistan, and a strong interest in protecting his mother, wife, daughters, siblings, and in-laws there. His communication and contact with his Pakistan-resident family members since he came to the U.S. are neither casual nor infrequent, and he has regularly visited there for extended periods. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and 8(c).

The evidence also fails to establish significant mitigation under AG ¶¶ 8(b) or 8(f). Applicant provided no evidence of longstanding relationships or loyalty to the United States. He came here to earn more money to support his family than he could earn in Pakistan or Oman. He twice tried to convince his wife and daughters to join him here as permanent residents, but they returned to live in Pakistan after only a few months. Their only substantial family assets are in the family home in Pakistan. He neither claimed nor established that he has endured life-threatening conditions or made a significant contribution to the national security, which would sufficiently demonstrate deep or longstanding U.S. relationships or loyalties under Appeal Board precedent.

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern regarding foreign preference:

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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. Department Counsel unpersuasively argued that substantial evidence in this case established one of them:

(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:

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

The SOR allegation under this guideline involves Applicant's acquisition of a Pakistani identity card that permits him to enter Pakistan as a U.S. citizen without having to obtain a separate visa for each visit. The card affords him no right, privilege, or benefit of Pakistani citizenship. Its existence, and his ongoing possession of it, do not establish any security concerns under the asserted DC or any other provision in AG ¶¶ 9 or 10.

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 relevant circumstances. 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature and experienced individual, who is seeking to provide service to U.S. military forces deployed overseas. However, the inherent potential for pressure, coercion, exploitation, or duress from the presence of Applicant's family members and home in Pakistan remains unmitigated. Placing Applicant in a position wherein it is foreseeable that he could be forced to choose between the security interests of the United States and the interests of his family is the harm to be avoided under Appeal Board precedent. He failed to show that such potential is diminished to any reasonable extent. His willingness and desire to serve in support of deployed coalition military units is commendable, but does not justify placing him or his relatives at risk of exploitation due to his access to classified information. He did not demonstrate sufficient connections to the United States to outweigh the heightened risks and potential conflicts under these circumstances.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from foreign influence considerations.

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
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For 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.

DAVID M. WHITE
Administrative Judge