



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-10700
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

11/15/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his ties to family members and associates who either are citizens and residents of Pakistan, or are Pakistani citizens residing in the United States. He also mitigated security concerns about his monetary assets and potential real property interests in Pakistan, as well as his acquisition of a Pakistani identification card after becoming a U.S. citizen. Clearance is granted.

On May 29, 2012, 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, adjudicators for the Department of Defense (DOD) were unable to find that it is clearly consistent with the national interest for Applicant to have

access to classified information.¹ On May 3, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines² under Guideline B (foreign influence) and Guideline C (foreign preference).

Applicant responded to the SOR (Answer), provided supporting documents,³ and requested a decision without a hearing. However, Department Counsel timely requested a hearing,⁴ and the case was assigned to me on August 6, 2013. Applicant waived the 15-day notice requirement (Tr. 9 - 11), and I convened the requested hearing on August 26, 2013. DOHA received the transcript of hearing (Tr.) on September 30, 2013.

Department Counsel presented Government Exhibits (Gx.) 1 - 7, which were admitted without objection. (Tr. 19 - 29) The Government also asked that administrative notice be taken of certain facts germane to the issues presented by the pleadings. I granted that request and admitted, as Hearing Exhibit (Hx.) 2, Department Counsel's five-page memorandum, supported by nine enclosed documents (Tr. 23 - 30). Applicant testified in his own behalf, but proffered no documentary information. At the close of the hearing, I left the record open to receive from Applicant additional relevant information. The record closed on September 27, 2013, when I received Applicant's timely post-hearing submissions. They have been admitted without objection as Applicant's Exhibit (Ax.) A.

Findings of Fact

Under Guideline B, the Government alleged that Applicant's father (SOR 1.a), two sisters (SOR 1.b), mother-in-law (SOR 1.c), and father-in-law (SOR 1.d) are citizens of, and reside in, Pakistan. It was also alleged that his wife is a citizen of Pakistan residing in the United States (SOR 1.e); that his father-in-law is a retired employee of Pakistan's government (SOR 1.f); that Applicant provides financial assistance to his mother in Pakistan (SOR 1.g); that Applicant maintains an account in a Pakistani bank with an estimated balance of \$5,000 (SOR 1.h); and that he owns a portion of real estate in Pakistan, with a share value of about \$45,000 (SOR 1.i). Applicant admitted, with explanations, SOR 1.b - 1.g. He denied, with explanations, SOR 1.a, 1.h, and 1.i. (Answer)

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

² 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).

³ At hearing, Department Counsel waived objection to including in the record the attachments to Applicant's Answer. (Tr. 11 - 12)

⁴ See Directive E3.1.7. The Government's request for hearing is included as Hearing Exhibit (Hx.) 1.

Under Guideline C, the Government alleged that in February 2012, Applicant, a naturalized U.S. citizen, obtained a National Identification Card for Overseas Pakistanis. (SOR 2.a) Applicant admitted, with explanation, this allegation. (Answer)

Applicant's admissions are incorporated in my findings of fact. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is a 44-year-old dual citizen of the United States and Pakistan. He was born in Pakistan and emigrated to the United States in 2006 on a family visa sponsored by his brother. Applicant earned U.S. citizenship in March 2011. He is currently employed as a linguist by a defense contractor supporting U.S. military missions in Afghanistan. He has held his current position since May 2012. In Pakistan, Applicant was a biology lecturer at a Pakistani university. After arriving in the United States, he found employment as a hotel laundry attendant, a grocer, a doughnut shop worker, a waiter, and a retail clothing salesman. Most of the time, he held two jobs at once with an average annual income of about \$45,000. He applied for his current job at the behest of his brother, who also is a linguist. Applicant has earned between \$87,000 and \$185,000 as a linguist. (Answer; Gx. 1; Gx. 3; Tr. 33, 41 - 45, 59 - 60)

Applicant came to the United States with his wife of 14 years and their two children. They now have four children, ages 13, 11, 5, and 3. The younger two were born in the United States. Applicant and his two older children became U.S. citizens in 2011. His wife is a stay-at-home mother. She has permanent resident alien (PRA) status and is still trying to master the language requirements for naturalization. (Answer; Gx. 1; Gx. 3; Tr. 40 - 41)

When Applicant was hired, he underwent a counter-intelligence (CI) screening required by the military for civilian linguists being considered for assignment with combat units. That process examined much of the same background information contained in his eQIP, and included an interview of Applicant. Although the CI screening noted that Applicant's background presents possible CI issues, he was approved for deployment to Afghanistan, where he has worked since June 2012. (Answer; Gx. 4 - 5)

Applicant has received two certificates of appreciation from the unit with whom he has worked in theater. The senior enlisted supervisor of linguists for that unit praised Applicant for his judgment, trustworthiness, and commitment to the troops and their mission. Much of Applicant's work for the first eight or nine months included supporting patrols tasked with finding and clearing improvised explosive devices (IEDs) planted by the enemy to ambush U.S. troops. On more than one occasion, Applicant was able to translate intercepted radio communications that helped U.S. troops avoid IEDs and ambush. Applicant also survived an enemy rocket-propelled grenade (RPG) attack on the unit he was supporting. Applicant has also helped U.S. and Afghan officials in their dealings with Taliban detainees. (Answer; Tr. 50 - 55)

Applicant's father died in 1999. Between 2006, when Applicant left Pakistan, and 2013, the year his mother moved to the United States, he periodically gave her

monetary gifts totaling about \$5,000. She has PRA status and has no plans to return to Pakistan. Applicant also opened a bank account in Pakistan three days before he left for the United States. The account had a balance of about \$4,000 when he left, and was set up to help his mother if an emergency arose. She only accessed the funds once, withdrawing about \$1,600 for medical expenses in 2011 or 2012. The account has been declared dormant from non-use and the funds are waiting to be claimed from a government escrow account. (Answer; Gx. 1; Gx. 3; Gx. 5; Tr. 32 - 35, 38, 60)

Applicant's two sisters are Pakistani citizens and still reside in one of Pakistan's major cities. They live in a house Applicant's brother built for them. Applicant has thought about buying the house sometime in the future, but he does not currently hold an interest in that property. When Applicant's father died, he left to Applicant and his siblings, a two-acre farm worth about \$40,000. Their mother continued living there after the father died. However, even though she is now in the United States, the farm may not be claimed until she dies. When that happens, a one-fourth interest in the farm will vest in Applicant and each of his siblings. Applicant will not have to return to Pakistan if he wants to claim his share of the estate. (Answer; Gx. 1; Gx. 3; Gx. 5; Tr. 47 - 50, 62)

Applicant's wife's parents are citizens of Pakistan and still live there. They have also applied for entry to the U.S. as permanent resident aliens. They wish to become U.S. citizens. Applicant has no contact with them. His father-in-law is a retired kindergarten teacher in a provincial Pakistani school system. (Answer; Gx. 1; Gx. 3; Tr.64 - 65)

Now that his mother is with him in the United States, Applicant has little or no contact with his sisters in Pakistan. Since the summer of 2012, when he deployed to Afghanistan, he has had no contact with them. However, he has begun the process to sponsor their immigration to the United States. (Answer; Gx. 1; Gx. 3; Tr. 57 - 58, 60 - 61)

Applicant has returned to Pakistan once since coming to the United States in 2006. In March 2012, he visited his mother for three weeks to get her started on her emigration from Pakistan and because she was sick. He has a Pakistani passport that expired before he became a U.S. citizen, and a U.S. passport he received in 2011. He knew that if he traveled to his mother's village and his only means of self-identification was his U.S. passport, he may be targeted for kidnapping or worse. Rather than renew his Pakistani passport, he renewed a Pakistani National Identification Card (NIC) that expired before he became a U.S. citizen. Applicant entered Pakistan on his U.S. passport and stayed in the city with his sisters. When he traveled to his mother's village, he left his U.S. passport at the house and carried the NIC as his only identification. His time in Pakistan passed without incident. Applicant has since relinquished to his company's security officer his NIC and his expired Pakistani passport. (Answer; Gx.1; Gx. 2; Gx. 3; Gx. 6; Gx. 7; Ax. A; Tr. 57 - 59, 60, 62 - 63, 66 - 71)

In response to Department Counsel's request, I take administrative notice of the following facts contained in Hx. 2:

Most of Pakistan's western border abuts Afghanistan. To the southwest, Pakistan shares a border with Iran. Extensive terror networks operate along the border with Afghanistan in the Federally Administered Tribal Areas (FATA) along the central Afghanistan border, in the Khyber Pass region in northwest Pakistan, and in Balochistan Province in southwest Pakistan. Chief among these terror networks are the Taliban, the Haqqani Network, and al-Qaeda. They operate in many cases without meaningful interference from the Pakistani government, and their activities consist of anti-U.S. and anti-coalition military operations across the border into Afghanistan. The FATA, and other areas mentioned above, provide safe havens from which terrorists have been able to plan and launch attacks on U.S. and coalition troops and interests in Afghanistan. Bombings and other acts of terror also have been reported throughout Pakistan, but the main focus of terrorist activity in Pakistan consists of attacks in urban areas, such as the capital city of Islamabad. Because of this information, the U.S. Department of State has issued numerous travel advisories and warnings to U.S. citizens considering traveling to Pakistan.

The United States and Pakistan have had diplomatic relations since Pakistan obtained its independence from Great Britain in 1947. The countries' interests have been in general agreement for much of that time. Since 2001, Pakistan has helped the U.S. in its global war on terrorism and has helped capture hundreds of Taliban and Al-Qaeda personnel. However, as noted, efforts to deny areas adjacent to Afghanistan as safe havens for terrorist organization have not been as effective as the U.S. would like. Another issue related to terrorist activity in Pakistan is the fact that Pakistani government and military entities have committed numerous human rights violations in the name of counter-terror operations and investigations. Extra-judicial killings, arbitrary arrests without access to due process, and other human rights problems are commonplace.

Finally, I note⁵ that the Islamic Republic of Pakistan is a federal republic made up of an executive, a legislative, and a judicial branch, whose powers and limitations are contained in a national constitution. The legislature is comprised of representatives in a bicameral parliament chosen through open elections from a multi-party system. A president and prime minister, and appointed cabinet members make up the head of the executive branch. Supreme court justices are appointed by the executive to oversee a common law legal system influenced by Islamic Sharia law.

⁵ This information was not contained in Hx. 2. I obtained this information *sua sponte* from the CIA World Factbook page regarding Pakistan at www.cia.gov.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ 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 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 interest⁷ 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.⁸

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

⁶ See Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.⁹

Analysis

Foreign Influence

The facts established by Department Counsel's information and by Applicant's admissions raise security concerns about Applicant's personal relationships and other interests in Pakistan. The security concern about foreign influence is stated at AG ¶ 6 as follows:

[f]oreign 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.

More specifically, available information requires application of the following AG ¶ 7 disqualifying conditions:

- (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
- (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.

Pakistan is an ally of the United States and is governed through a democratic system modeled after Great Britain and the United States. Nominally an open society with an independent judiciary, the reality is that terror groups in the western regions of

⁹ See *Egan*; AG ¶ 2(b).

Pakistan have had a destabilizing influence on large parts of the country, mostly along the to the west in the FATA, Khyber Pass and Balochistan regions. Although not state-sponsored, they have been able to operate against U.S. persons and interests in Pakistan, and against U.S. and coalition military forces across the western border with Afghanistan. Because those groups create a heightened risk of violence against U.S. interests, the presence of persons in Pakistan with whom Applicant has close personal ties of friendship and affection is a security concern under Guideline B.

Applicant lives in the United States with his wife and children. His wife remains a Pakistani citizen, but she also has PRA status here and is working towards becoming a naturalized citizen. Her only known tie to Pakistan is her father, a retired kindergarten teacher in the provincial school system. It is presumed from Applicant's close relationship with his wife that he is also close to his father-in-law. However, Applicant rarely has contact with his father-in-law, and the government connection presented by his former employment is too attenuated to be a viable security risk.

Applicant's mother also is a Pakistani citizen with PRA status in the United States. However, she recently moved in with Applicant and his wife, and it is unlikely she will return to Pakistan. Finally, Applicant has two sisters in Pakistan. Neither is connected to the Pakistani government, and Applicant has begun the process to sponsor their immigration to the United States. Now that their mother is with Applicant in the United States, Applicant has no need to contact them, and he has not spoken to either sibling in the 18 months he has been deployed to Afghanistan.

Before his mother left Pakistan, Applicant had provided occasional monetary gifts over seven years totaling \$5,000. These gifts were insignificant when compared to Applicant's total income and assets. The financial help for his mother, without more, is not disqualifying; but it does provide evidence of a close foreign relationship.

In 2006, Applicant also set up for his mother a bank account containing about \$4,000. She used about \$1,600 of that money once when she was ill. The remainder lies unclaimed in a Pakistan bank. After his father died, Applicant and his three siblings each became eligible to receive a one-fourth interest in their father's farm. However, Applicant's interest in the estate is speculative, because he cannot claim it unless and until his mother predeceases him. As for the bank account, it is inactive and the remaining money does not constitute a substantial financial interest or asset in Pakistan.

All of the foregoing supports application of the following AG ¶ 8 mitigating conditions:

- (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.

There is little question that the presence of Applicant's sisters in Pakistan poses a security risk. As more thoroughly discussed, below, the fact that Applicant renewed his NIC out of concern for his safety while traveling to see his mother, supports a finding that Pakistan poses a heightened security risk. However, on balance, and in consideration of Applicant's work in support of U.S. troops in Afghanistan, I am satisfied that his decision in that instance showed sound judgment and discretion. Overall, the record shows that his circumstances do not pose an unacceptable security risk with respect to foreign influence. I conclude Applicant has mitigated the Guideline B security concerns.

Foreign Preference

Applicant renewed his Pakistani identification card (NIC) in 2012 and carried it with him when he traveled to Pakistan in 2012 to see his mother. This conduct raises a security concern because Applicant exercised foreign citizenship after becoming a U.S. citizen and while possessing a U.S. passport. These actions raise a security concern about foreign preference that 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 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; and (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

There is no foreign passport at issue here because Applicant chose not to renew his expired Pakistani passport for his trip. Instead, he used his U.S. passport to enter and leave Pakistan, but obtained and used his NIC to travel between his sisters' residence and his mother's village. The NIC allows Applicant to move about outside of the United States as a Pakistani citizen rather than a U.S. citizen. I conclude that obtaining the NIC is sufficient to raise AG ¶ 10(a)(1). Alternatively, AG ¶ 10(a)(3) applies because Applicant used his ongoing foreign citizenship to obtain the NIC, which could allow him to obtain other benefits of Pakistani citizenship.

By contrast, Applicant has relinquished his NIC, as well as his expired Pakistani passport, to his company's security officials. His company has stated that it will notify DOD if Applicant seeks to reclaim those instruments. His actions in response to the Government's concerns in this regard require application of the mitigating condition at AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). Further, Applicant plausibly explained the circumstances surrounding his acquisition and use of the NIC. On one hand, the need to use a NIC while inside Pakistan highlights the security risks raised by the Government's information here. On the other hand, and more important, Applicant's limited use of the NIC demonstrated sound judgment and discretion by recognizing the need to avoid attention as a U.S. citizen. While he chose to subject himself to the risks of travel in Pakistan, he did what he could to limit that risk and he will not find himself in such circumstances again. Applicant has no need to return to Pakistan, and his personal and professional life are established in the United States. I found him credible and straightforward in his testimony, particularly his explanations about why he felt compelled to use the NIC when he traveled to see his mother. On balance, I conclude Applicant has mitigated the security concern under this guideline.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B and C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult who has worked hard to establish a better life for him and his family since arriving in the U.S. seven years ago. He has sponsored the immigration of his mother as a PRA, and it appears likely his sisters will follow in the foreseeable future. Now that Applicant's mother is here, he has no reason to return to Pakistan. Applicant's ties and preferences are decidedly in the U.S.. His work as a linguist in support of the U.S. military has been valuable and has subjected him to personal danger in the field. His military counterparts have praised Applicant for his dedication, reliability, and trustworthiness under arduous conditions. A fair and commonsense assessment of all available information shows Applicant has the good judgment, reliability, and trustworthiness expected of one to whom the Government entrusts its interests. I

conclude the record as a whole shows that Applicant's conduct and foreign ties do not present an unacceptable security risk.

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 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.l:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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.

MATTHEW E. MALONE
Administrative Judge