



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-10742
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

06/28/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 14 November 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant raising security concerns under Guideline B (Foreign Influence).² Applicant timely answered, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 30 January 2013, and I convened a hearing 13 February 2013. DOHA received the transcript (Tr.) 22 February 2013.

¹Consisting of the transcript (Tr.) and Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits (AE) A-B.

²DOHA acted under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 44-year-old linguist employed by a defense contractor since April 2011.³ He was granted an interim clearance in October 2010.

Applicant was born in Pakistan in May 1968. He immigrated to the U.S. in 1993, when he was 24 years old, and became a naturalized U.S. citizen in February 1999. His most recent U.S. passport was issued in April 2009 (GE 1).

Applicant married a Pakistani national, in Pakistan, in November 1999. The marriage was arranged, consistent with Pakistani custom. She immigrated to the U.S. and became a legal permanent resident of the U.S. She applied for her U.S. citizenship in 2010, and became a naturalized U.S. citizen in 2011. She is a housewife. She owns a house in Pakistan, given to her by Applicant as part of her dowry when they got married, again consistent with Pakistani culture. They have three children together, born in the U.S. in March 2001, August 2002, and June 2007. Consistent with Pakistani culture, they carry their father's first name as their last name.

Applicant's parents are separated. His mother is a citizen of Pakistan, legally resident in the U.S. However, she travels to Pakistan every two or three years. She stays with her parents when she is in Pakistan. His father is a naturalized U.S. citizen who returned to live in Pakistan after he retired from his job as a security officer in 2006. Applicant has had no contact with his father since he returned to Pakistan.

Applicant's parents-in-law, two sisters-in-law, and his extended family (aunts, uncles, cousins) are all resident citizens of Pakistan. They all live in the Peshawar region of Pakistan—where Applicant is from himself—one of the more high-risk-for-terrorist-activity areas of Pakistan. Applicant's brother-in-law is a Pakistani citizen who is permanently resident in Australia. Applicant's father-in-law is a medical doctor. Typical of many women in Pakistan, Applicant's female relatives are not employed outside the home.

Applicant returned to Pakistan for his 1999 wedding. Since then, he has returned to Pakistan in 2001 to take their first child to see his in-laws, in 2003 to take their second child to visit his in-laws, in 2005 to visit his in-laws and his family who were already there, in February 2006 to pick up his family and bring them back to the U.S., and in 2010. These trips typically last about three weeks.

Applicant's wife owns a home in Pakistan valued at about \$80,000. Applicant's father gave it to him to give to his wife as part of her dowry when they married.

³However, Applicant also worked for this employer as a linguist from October 2010 to February 2011. From January 2000 to October 2010, and between stints with his current employer, Applicant worked as a store manager for a local pharmacy chain. He is on a leave of absence from that company, to which he will return when he is finished with his linguist contract.

Applicant or his wife, usually with their children, stay there whenever they travel to Pakistan to visit relatives.

Applicant talks to his in-laws about monthly, when they call his wife.⁴ She maintains regular contact with her parents. Applicant has personal contact with his in-laws and other relatives when he travels to Pakistan (GE 3).

Aside from the house, all his property and financial interests are located in the U.S. He does not stand to inherit any property in Pakistan. Applicant does not intend to return to Pakistan.

Pakistani law does not permit dual citizenship or nationality except with the U.K. and Commonwealth nations. Under the Pakistan Citizenship Law of 1951, Applicant ceased to be a Pakistani citizen when he acquired U.S. citizenship. Applicant's three children do not hold dual citizenship.

Pakistan is an Islamic parliamentary democracy with a poor human rights record, including extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread government corruption, and the disappearance and imprisonment of political opponents. Nevertheless, Pakistan has had diplomatic relations with the U.S. since 1947 and has actively cooperated with the U.S. in the global war on terrorism. However, terrorist groups operate in Pakistan, making safety and security an issue. Extremist groups in Pakistan target American and other Western interests, senior Pakistani officials, and members of minority indigenous and religious groups. Pakistan is not on the National Counterintelligence Center's list of most active nations engaging in foreign economic collection and industrial espionage. It is not known to be an active collector of U.S. intelligence information, nor is it known to target its expatriate former citizens to obtain U.S. information.

Applicant's work as a linguist puts him in combat zones, where he has been under hostile fire. He has numerous recommendations and recognitions from the U.S. military personnel and units for whom he provides translations and cultural indoctrination (GE 3; AE B). He has an excellent work record with his employer (GE 3). His district manager and co-manager from the pharmacy chain testified that Applicant is honest and trustworthy. His neighbor for many years, a retired U.S. Government employee, testified similarly.

⁴At hearing, Applicant minimized the contact that he has with his relatives in Pakistan (Tr. 43-50), claiming that he was "rarely" in contact with his father-in-law, that his contacts with his mother-in-law were "none at all." He broadly claimed (describing his contacts with his other Pakistani relatives), "I do not have any contact with them" (Tr. 46) and "I do not have any contacts with my family members." (Tr. 48). These assertions are in sharp contrast to the contacts he described during his May 2011 interview with a Government investigator (GE 3). I find the May 2011 descriptions more credible than his testimony, and my findings of fact accordingly reflect the more frequent contacts.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter 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 required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁵

Analysis

The Government established a case for disqualification under Guideline B, and Applicant failed to mitigate the security concerns. Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁶ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target expatriates who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶¶ 6.

specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁷

Applicant has been a U.S. citizen for 14 years, but retains significant bonds of affection and obligation to family in Pakistan, as well as having a substantial financial interest there in the form of the house owned by his wife. He mitigated the security concerns related to his mother who lives in the U.S. (although her trips to Pakistan increase the risk of influence on Applicant) and his brother-in-law who lives in Australia, as both are effectively beyond the reach of the Pakistani government or Pakistani terrorist groups. He mitigated the security concerns related to his father, with whom he has had no contact since 2006.

However, his remaining relationships to Pakistan remain problematic. His wife's \$80,000 property interest must be imputed to him, whether his name is on the deed or not. The property value is both significant in its own right and in proportion to his U.S. assets.

Under any assessment, Applicant has close and continuing contacts with his in-laws and extended family in Pakistan. He has regular personal contact with his parents-in-law, and even if I concluded that he did not, he would be presumed to have close ties of affection or obligation because of his wife's contact with them. His contacts with his sisters-in-law and extended family are only slightly less frequent. Applicant's frequent travel to Pakistan since 1999 has no independent security significance, but its regularity and its expressed purpose (to visit family members) serves to strengthen Applicant's ties to Pakistan. Further, Applicant remains influenced by Pakistani custom and tradition. He traveled to Pakistan for an arranged marriage in accordance with Pakistani custom. He gave his wife a house as part of her dowry in accordance with Pakistani custom in accordance with Pakistani. His three children bear his first name as their last name in accordance with Pakistani custom.

None of Applicant's foreign family members have any apparent connection to the Pakistani government, and while Pakistan is not the most stable of regimes in the region, it is not known to pursue U.S. government information or to target its former citizens for that information. However, all his family members live in a region of Pakistan subject to significant threat of terrorist activity. His frequent contacts with those family members, and his regular travel to visit them, raise significant risk of influence adverse to Government interests. None of this suggests that Applicant is not a loyal U.S. citizen, or that he has a preference for Pakistan. It suggests only that Applicant is potentially subject to influence or duress connected to his family residing in Pakistan. I resolve Guideline B against Applicant.

⁷ ¶ 7 (a).

Formal Findings

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraphs a, d-f, & h: Against Applicant
Subparagraphs b, c, & g: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge