



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



In the matter of:)
)
) ISCR Case No. 12-12411
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 13, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 24, 2012. On May 7, 2013 the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on June 26, 2013, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on August 19, 2013. Applicant responded to the FORM in writing (Response) on September 26, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Pakistan. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated June 26, 2013, Applicant admitted the factual allegations in all the Paragraphs of the SOR, with explanations.

Guideline B - Foreign Influence

1.a. Applicant's spouse is a citizen of and lives in the United States. (Response at pages 5 and 6.) She became a naturalized U.S. citizen in June of 2013, and has a U.S. passport issued in August of 2013, as evidenced by those documents. (*Id.*) His nine year old stepdaughter (alleged as his daughter) lives with her mother and Applicant in the United States. (Item 3 at pages 27~28.) She has been a Permanent Resident since March of 2010, and has also been issued a Social Security Card, as evidenced by those documents. (Answer at pages 9~11.)

1.b.~1.f. Applicant's brother and two sisters are citizens and residents of Pakistan. (Item 3 at pages 29~33.) All three are employed by the government of Pakistan, his brother is a college instructor, one sister is a college professor, and the other sister is an elementary school teacher. (*Id.*) From 2008 to September of 2012, when he executed his e-QIP, Applicant gave his brother an estimated \$1,500. (Item 3 at page 39.) Since he began work with a Special Operation Task Force as a linguist and cultural advisor, Applicant has had no contact with his siblings, who do not know what work he does and for whom he works. (Response at pages 1 and 9.)

1.g. Applicant has a 25% interest in a house he and his siblings inherited on the death of his parents. (Item 3 at pages 37~38, and Response at page 2.) The house's value is about \$100,000, and is lived in by his siblings. (Response at page 2.) He avers, credibly, that "if the four of us agree to sell that house and I may get my share and bring the money to America." (Response at pages 2, and 7~9.) This credibility assessment is based on the statements of his Assistant Detachment Commander, a U.S. Army Warrant Office in the Special Forces; his Detachment Commander, a U.S. Army Captain; and Provincial Augmentation Team Leader, a U.S. Marine Corps Lieutenant Colonel. (Response at pages 7~9.)

1.h. and 1.i. Applicant's "brother-in-law(s) and sister-in-law(s)" are citizen and residents of Pakistan. (Little is alleged or can be gleaned from the FORM regarding his wife's siblings.) However, his brother-in-law was used as a conduit to funnel \$2,800 to Applicant's "wife, when she was in Pakistan. The concern (sic) money was used for Immigration purpose (sic) such like, Medical for immigration, travel to USA Embassy to Islamabad Pakistan, buying ticket to come to New York and daily uses of expenses."

(Response at page 1.) Again, Applicant's credibility in this regard is based on the before mentioned averments of his U.S. military chain-of-command, which will be further discussed under the Whole-Person Concept, below.

I take administrative notice of the following facts. On May 1, 2011, U.S. Special Forces personnel raided a large al-Qa'ida compound located in Pakistan and shot and killed al-Qa'ida leader Osama bin Laden. The U.S. Department of State has concluded that, in 2012, Pakistan continued to experience terrorist violence, including sectarian attacks. The Pakistani military undertook operations against groups that conducted attacks within Pakistan. The State Department warns U.S. citizens to defer all non-essential travel to Pakistan, as the presence of several foreign and indigenous terrorist groups pose a potential danger to U.S. citizens throughout Pakistan. Finally, major human rights problems in Pakistan include extrajudicial killings, torture and disappearances committed by security forces, as well as by militant, terrorist and extremist groups, affecting thousands of civilians in all areas of the country.

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 and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. 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." 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraphs 7(a) and 7(b) are arguably applicable: 7(a) “*contacts with a foreign family member . . . 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*”; and 7(b) “*connections to a foreign person . . . 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 . . . by providing that information.*” The Applicant’s three siblings and his in-laws are citizens and residents of Pakistan. These are clearly countered, however, by the first and second mitigating conditions, as 8(a) “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*”; and 8(b) “*there is no conflict of interest [as] 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.*” The Applicant has lived in the United States since 1994, is a U.S. citizen, and serves the U.S. military in Afghanistan. He has had no contact with his siblings or in-laws since he began his work with our forces in Afghanistan in 2012. Furthermore, I find the Applicant cannot be coerced by the government of Pakistan or any other government vis-a-vis his siblings and in-laws. I also find that Applicant’s potential \$25,000 property interest is not significant, as Applicant’s siblings live there and there are no real plans to sell said property.

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 the circumstances. 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.

The Administrative Judge should also 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.

The record shows that the Applicant understands his responsibility to the United States, and serves this country honorably and well in Afghanistan. He is highly regarded by his Army and Marine Corps superiors with whom he serves. (Response at pages 7~9.) His Detachment Commander, a U.S. Army Captain, avers, in part, the following:

3. [Applicant] . . . provided an in-depth cultural and political understanding that was highly important to fully comprehending the nuances involved with operating in the tribal landscape of which Afghanistan is comprised. . . [Applicant's] understanding of the Afghanistan-Pakistan border areas as well as the political influences of specific areas across the Area of Operation provided invaluable abilities to . . . [his U.S. military employer's] intelligence mission as well as to Village Stability Operations . . . [in an Afghan] District. . . [Applicant's] dedication and hard work greatly enhanced . . . [his U.S. military employer's] intelligence mission as well as to Village Stability Operations efforts as a whole.

4. [His U.S. military employer] would like to officially thank . . . [Applicant] for his efforts and strongly recommends . . . [Applicant] for any Linguist position in the Intelligence Community. (Response at page 3.)

His Provincial Augmentation Team Leader, a U.S. Marine Corps Lieutenant Colonel, avers the following:

This LOR [Letter of Recommendation] is record to the exemplary conduct and mentorship . . . [Applicant] has provided to the . . . mission during his tour in Afghanistan, 22 September 2013. . . [Applicant] has been instrumental in day to day operations in coordination with the . . .

Provincial Government and continues to perform beyond expectations. . . . [Applicant] is clearly a cut above his peers as displayed by his professional and personal conduct. . . . [Applicant] is enthusiastically recommended for promotion, retention and billets of greater influence. (Response at page 9.)

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Influence.

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
Subparagraphs 1.a.~1.i.	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge