



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



In the matter of:)
)
) ISCR Case No. 13-00287
)
Applicant for Security Clearance)

Appearances

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

10/29/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 3, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR in writing on June 6, 2013, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 14, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on June 18, 2013. He timely submitted an answer to the FORM with documents that are marked Applicant's Exhibits (AE) A through M. The case was assigned to me on October 18, 2013. Applicant's Exhibits and the Government exhibits included in the FORM are admitted without objection. Department Counsel requested that I take administrative notice of certain facts about Pakistan. Applicant did not object, and the request is granted.

Findings of Fact

Applicant is a 44-year-old linguist working for a defense contractor. He is applying for a security clearance. He completed a technical school. He is married with three minor children.¹

Applicant was born in Pakistan to Pakistani parents. His parents were already living in the United States when Applicant immigrated to the United States in 1993. He became a U.S. citizen in 1999. His parents are now deceased.²

Applicant's wife, who is also his cousin, was born in Pakistan. They married in Pakistan in 1994. His wife remained in Pakistan for several years, and their oldest child was born in Pakistan. The child is now a U.S. citizen. Applicant visited his wife in Pakistan several times before she moved to the United States. He has not visited Pakistan since 2004. Applicant's wife became a U.S. citizen in 2005. Their younger two children were born in the United States.³

Applicant had five siblings. One of his siblings is deceased. He was a U.S. permanent resident before he passed away. Two of Applicant's siblings are U.S. citizens. They have also worked as linguists. Two of Applicant's siblings, as well as their spouses, are citizens and residents of Pakistan.⁴

Applicant's mother-in-law is a Pakistani citizen, but she is a U.S. permanent resident, living with Applicant and his wife. His father-in-law is a citizen and resident of Pakistan. He is retired.⁵

Applicant's wife has six siblings who are Pakistani citizens and residents. His wife's siblings are also his cousins. Applicant has other cousins and an additional five stepsiblings who are Pakistani citizens and residents. One of Applicant's cousins served about 20 years in the Pakistani military before he retired as a senior officer. Applicant stated that he does not have any contact with this cousin, and he does not remember

¹ Items 3, 8; AE A.

² Items 3-6, 8.

³ Items 3-6, 8; AE A.

⁴ Items 2-6, 8; AE A.

⁵ Items 2-6, 8; AE A.

the last time he saw or talked to this cousin. With the exception of this cousin, none of Applicant's family has any association with the Pakistan government.⁶

Since 2005, Applicant has spent a number of years working overseas under combat conditions as a linguist for defense contractors. Applicant submitted commendatory material and letters from U.S. military and civilian personnel, who praised his character, abilities, and service to the mission. In 2005, a U.S. military officer wrote that Applicant's "professional manner, attention to detail, and impartial and accurate translations have led to countless leader engagements resulting in an immeasurably positive impact in our area with the [local] populace." Another military officer wrote that Applicant was "one of the finest interpreters and patriots that [he had] ever served with." A battalion commander wrote that he "strongly recommend[ed] [Applicant] for positions of high trust, political sensitivity, and judgment based on his outstanding performance as [his] senior interpreter." Another officer praised Applicant's performance during numerous operations "in an austere and rugged environment," noting that "after five deployments to Southwest Asia, [he had] yet to see a better interpreter working for the United States."⁷

A military officer wrote in 2009 that Applicant was "by far the best ITCA (interpreter, translator, and cultural advisor) [he had] worked with throughout [his] multiple deployments in Iraq and Afghanistan." A senior DOD civilian wrote in 2010 that throughout his career, "no linguist has shown the high level of dedication, effective professionalism, and work ethic of [Applicant]." In 2012, a senior noncommissioned officer praised Applicant as an essential member of their team, noting that Applicant "served faithfully in a mission essential role in extremely harsh, stressful, and life threatening conditions."⁸

Applicant is currently working overseas as a linguist for the fourth time. He stated that he is serving overseas because he wants "to serve the needs of the United States." He stated that his and his wife's main goal is to give their children a fine education and raise them as good U.S. citizens. His family loves America and they "thank God every day that [they] live in the best country of the world." He stated that he would never "do anything wrong that [his] family would be ashamed of or let anybody do anything to harm [his] country regardless of who they were."⁹

Pakistan

The U.S. Department of State has defined terrorist safe havens as 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,

⁶ Items 2, 5-8; AE A.

⁷ Items 3, 8; AE A-M.

⁸ AE B-D, I.

⁹ Items 3, 8; AE A.

communicate, recruit, train, transit and operate in relative security because of inadequate governance capacity, political will, or both. Portions of Pakistan's Federally Administered Tribal Areas (FATA), Khyber Pakhtunkhwa (KPK) province, and Balochistan are safe havens for terrorist groups seeking to conduct domestic, regional, and global attacks. Al-Qa'ida, the Haqqani Network, the Afghan Taliban, Lashkar e-Tayyiba, and other groups exploit the inability of Pakistan's security agencies to fully control portions of its own territory to find refuge and plan operations. Taliban senior leaders continue to be based in Pakistan, which allows them to provide strategic guidance to the insurgency without fear for their safety

Pakistan-based Lashkar-e-Tayyiba will continue to be the most multifaceted and problematic of the Pakistani militant groups. The group has the long-term potential to evolve into a permanent and even HAMAS/Hizballah-like presence in Pakistan. In 2012, Pakistan did not take significant action against Lashkar-e-Tayyiba, which continued to operate and raise funds openly in Pakistan through its political and charitable wing, Jamaat ud Dawa. The U.S. Department of State has concluded that, in 2012, Pakistan continued to experience significant terrorist violence, including sectarian attacks. The Pakistani military undertook operations against groups that conducted attacks within Pakistan, but other groups, such as Lashkar-e-Tayyiba, were able to continue to operate in Pakistan. Pakistan did not directly target the Afghan Taliban or the Haqqani Network.

The Haqqani Network, an extremist organization operating as a strategic arm of Pakistan's Inter-Services Intelligence Agency, is also operating from Pakistan with impunity. This group has staged attacks on Afghan and U.S. troops in Afghanistan (as well as civilians), including the September 13, 2011 attack on the U.S. Embassy in Kabul, Afghanistan. On September 7, 2012, the United States formally declared the Haqqani Network a Foreign Terrorist Organization.

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. In announcing bin Laden's death, senior administration officials characterized him as a "sworn enemy of the United States and a danger to all humanity; a man who called for the murder of any American anywhere on Earth," who designated the United States as al-Qa'ida's "primary target," and who was responsible for killing thousands of innocent men and women not only on 9/11, but in the 1998 East Africa embassy bombing, the attack of the USS COLE, and many other acts of brutality." That he was found in a residential neighborhood of Pakistan, in a compound that was "roughly eight times larger than other homes in the area with 12-to-18 foot walls topped with barbed wire" and other "extremely elaborate" physical and operational security measures, highlights the U.S. concern that terrorists, militants, and insurgents find safe havens in areas of 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 poses a potential danger to U.S. citizens throughout Pakistan. In 2012, Pakistan experienced numerous bomb blasts, suicide attacks and sectarian violence resulting in the deaths of

more than 2,000 civilians and 680 security forces personnel. Attacks targeting civilians and security personnel occurred across all provinces. These included attacks against U.S. citizens and other Western interests, U.S. Government vehicle convoys, U.S. personnel, and Pakistani government authorities. In 2011, the Governor of Punjab and the Pakistani Federal Minister for Minority Affairs were assassinated in two different attacks. Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Suicide bombings and attacks occur throughout Pakistan on a regular basis. Also, several American citizens throughout Pakistan have been kidnapped.

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. Additional problems include poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in persons. Military and terrorist operations in all four provinces and in FATA resulted in hundreds of deaths and thousands of injuries.

The Pakistani government maintains several domestic intelligence services that monitored politicians, political activists, suspected terrorists, and the media. Credible reports indicated that authorities routinely used wiretaps and intercepted and opened mail without the requisite court approval, as well as monitoring mobile phones and electronic correspondence.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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."

¹⁰ Items 9-17.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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.

Applicant's siblings, cousins, and in-laws are citizens and residents of Pakistan. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, both directly and through his wife. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.; and

(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.

Applicant has been in the United States since 1993, and he has been a U.S. citizen since 1999. Almost all of his immediate family members are U.S. citizens or permanent residents. A number of his siblings, in-laws, and extended family members are Pakistani citizens and residents. Pakistan has continuing human rights and terrorist concerns. Because of the nature of its government and the terrorist concerns, I am unable to find AG ¶ 8(a) applicable.

Since 2005, Applicant has served overseas on four occasions, working under combat conditions as a linguist for defense contractors. The praise from the U.S. military and civilian personnel he worked with is impressive. He stated that he loves America, and that he would never "do anything wrong that [his] family would be ashamed of or let anybody do anything to harm [his] country regardless of who they were." The Appeal Board has stated that such statements, standing alone, are of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he or she made a significant contribution to

the national security.¹¹ In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I find Applicant provided extraordinary evidence of his compliance with military requirements in dangerous, high-risk circumstances during his combat services overseas, and he has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

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.

¹¹ ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's character evidence and particularly his outstanding work overseas under hazardous conditions. I also considered the totality of Applicant's family ties to Pakistan. Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."¹² The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."¹³ Pakistan continues to struggle with human rights issues, and it is plagued by terrorism. The complicated state of affairs in Pakistan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden. I also find that his devotion to the United States, as evidenced by his participation overseas in combat missions, mitigates any concerns raised by his foreign contacts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence security concerns.

¹² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹³ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

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.f: 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.

Edward W. Loughran
Administrative Judge