



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 13-00300
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Jonathan Bell, Esq.

02/18/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 29, 2011. On May 13, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and E. DOD acted under Executive Order 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 DOD on September 1, 2006.

Applicant received the SOR on May 21, 2013; answered it on June 10, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 4, 2013, and the case was assigned to me on November 14, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on November 18, 2013, scheduling the hearing for December 13, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until January 3, 2014, to enable Applicant to submit additional documentary evidence. He timely submitted AX G, which was admitted without objection. DOHA received the transcript (Tr.) on December 24, 2013.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Pakistan. The request and supporting documents are attached to the record as Hearing Exhibit I. I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶ 1.a in part, admitted SOR ¶ 1.b, and denied SOR ¶ 1.c and 2.a through 2.d. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old linguist employed by a defense contractor. He has never held a security clearance.

Applicant was born in Pakistan, the youngest child in the family. One brother was adopted by another family and became a doctor, but all his other siblings have very limited education. Applicant finished high school and college in Pakistan. (Tr. 74-77.) He received a bachelor's degree in commerce in March 1995. (GX 1 at 13; Answer at Exhibit 16.)

After graduating from college, Applicant decided that he had no future in Pakistan, and he began looking for countries that offered more opportunities. He considered the United Kingdom, Ireland, and Australia as possibilities. (Tr. 77.) He went to Switzerland in November 1996 on a student visa and earned a diploma from a hotel and tourism college. (Answer at Exhibit 16.) He briefly returned to Pakistan in September 1997, upon completion of his education. He returned to Switzerland in July 1998 on another student visa.

While in Switzerland, Applicant became interested in immigrating to the United States. He applied for and received a tourist visa for the United States. He arrived in the United States in November 1999. He remained in the United States illegally after his tourist visa expired. He applied for amnesty in April 2001, married a U.S. citizen in July 2001, and then applied for permanent resident status based on his marriage to a U.S. citizen. He was granted a work permit in 2002 and a permanent resident card in 2003 or 2004. He earned a bachelor's degree in business administration in 2009. (Answer at Exhibit 16.) He became a U.S. citizen in August 2010. In June 2011, he renounced his

Pakistani citizenship and surrendered his Pakistani passport to the Pakistan Embassy. (GX 1 at 37; GX 2 at 1-2; Answer at Exhibit 11.)

Applicant worked full time as a gas station attendant from January 2000 to September 2004, and he continues to work part time at the gas station as an attendant and cashier. He was unemployed from December 2004 to February 2005. He worked as a food server and busboy at a hotel restaurant from February 2005 to December 2006 and as a busboy at another restaurant from January to June 2007. He also worked as a transit coordinator for a school bus company from December 2006 to June 2011, but was unemployed during the summers. (GX 1 at 14-22; GX 4 at 2.) He has a taxi license but he obtained it only as a backup means of employment, and he has never worked as a taxi driver. (GX 3 at 2; Tr. 153.) He was hired by his current employer in June 2011.

Applicant lives in a rental home. He presented no evidence of significant financial interests, savings accounts, or retirement accounts in the United States.

Applicant's ex-wife is a native of Brazil who is a naturalized U.S. citizen. She has an adult daughter who is a U.S. citizen. (GX 1 at 28) She suffered a mental breakdown in 2011 and returned to Brazil. They divorced in August 2012. (Answer at Exhibit 17; Tr. 158.)

Applicant's parents are deceased. He has three brothers and two sisters. Two other brothers, including the one who became a doctor, are deceased. (Answer at 2; GX 1 at 29-33; Tr. 96.) One brother, a farmer, is a citizen and resident of Pakistan. Applicant has no contact with him. (Tr. 96.) He last saw this brother in 2005, when he traveled to Pakistan to visit his ailing mother. (Answer at 2.)

Another brother, a car mechanic, is a citizen of Pakistan who has been working in Saudi Arabia for more than 20 years. Applicant speaks with him about once a month and last saw him in 1997. (Answer at 2.)

A third brother is a citizen of Pakistan who works odd jobs and construction in Saudi Arabia. Applicant speaks with him about once a month and last saw him in 1998. (Answer at 2-3.)

Applicant's two sisters are both citizens and residents of Pakistan. Both are married and have children. His older sister is seriously ill. Her husband has worked for an advertising company in Saudi Arabia for more than 12 years. Applicant calls her once or twice a month to check on her condition. The other sister's husband is a local policeman. Applicant speaks to her about twice a year. (Tr. 99.) Applicant has applied for immigrant visas for both of his sisters. (Answer at 4.)

On his SCA, Applicant listed a family friend who is a citizen and resident of Pakistan. (GX 1 at 34.) He does not know her home address, but he had telephonic contact with her about 15 times a year until recently. (GX 4 at 3.) She is married and

has five children. Applicant contacted her to check on the health of one of his sisters, but he had not contacted her for about a year as of the date of the hearing. (Answer at 4-5; Tr. 139-40.)

In his Answer to the SOR, Applicant stated, "The situation is so dangerous now in Pakistan that I cannot go back to be married where my fiancée's family and my family live. It is so horrible, I am honestly too scared of the random violence in Pakistan that I have chosen to apply for a fiancée visa to be married here" (Answer at Exhibit 17.) However, at the hearing, he testified that his family members live in a rural area and are not in any danger. (Tr. 104.) He did not mention a fiancée at the hearing.

Applicant testified that if he was required to choose between the safety of his family and doing his job as a contractor, he would choose his duty to his country. He testified, "If I have a country then I have a family. If I don't have a country what should I have? First is our country, then somebody else." (Tr. 105.)

In 2005 or 2006, Applicant applied for a job with a bus company and submitted copies of his private and commercial driver's licenses. After submitting his application, he moved to a new address. He was contacted by a police detective and asked to verify that he had a private vehicle license and commercial driver's license. (Answer at Exhibit 13.) He showed the detective his licenses, and heard nothing further about their validity until he received the SOR alleging that the photographs of the documents were of another person, the signatures did not match the signature on his application, and the addresses on the documents were different from the address on his application. At the hearing, Applicant presented his driver's licenses, a copy of a medical record, and a copy of his work permit issued in February 2002. (AX F.) He testified that the signature on his SCA is different from the signatures on the other documents because he was instructed to write his full legal name on the SCA, but he used his customary signature on the other documents. (Tr. 164-67.)

In January 2007, Applicant was arrested on a charge of grand larceny. Applicant was working in a gas station, and a cab driver accused him of stealing personal property from the cab. At the hearing, Applicant testified that he found a small brief case near the gas pumps, and he placed it in a prominent position near the cash register, thinking that someone had lost it. The cab driver returned to the station, saw the brief case, and accused Applicant of taking money and a video game from it. (Tr. 111-13.) Applicant appeared in court with a court-appointed attorney, and the charges were dismissed and the record sealed. (Answer at Exhibit 14.) The owner of the gas station testified that he talked to the cab driver after Applicant's arrest and the cab driver told him that he was not going to court because he "more or less" made a mistake. (Tr. 45.)

On his SCA, Applicant answered "yes" to the question whether, during the last seven years, he had been arrested, but he answered "no" to the question whether he had ever been charged with a felony. In the explanation section on the SCA, he stated that he was charged with grand larceny, possession of stolen property, and coercion,

and he indicated that the charges were dismissed and the record sealed. (GX 1 at 39-40.)

Applicant discussed his arrest during a counterintelligence screening in July 2011. The screener noted that Applicant was hesitant to discuss the incident, initially stating that he never had any “interactions with law enforcement.” The screener stated that when Applicant was reminded that he disclosed an arrest for grand larceny and possession of stolen property on his SCA, he explained it “in minimal details.” (GX 2 at 7.) At the hearing, Applicant denied being “hesitant.” He testified that he did not understand the meaning of “interactions with law enforcement,” and he thought it might have to do with immigration. (Tr. 114-15.)

During the same screening interview, Applicant was questioned about being detained in 2004 while traveling to Canada to visit a friend. According to the screener, Applicant said he was detained for “almost the whole day” and then released. The screener commented that Applicant “was extremely hesitant to describe this incident” and initially stated “No” several times when asked about any previous interviews or questioning by a government or government-affiliated organization. (GX 2 at 7.) At the hearing, Applicant denied being “hesitant” and denied being detained. He testified that when he arrived in Canada, he was asked for his passport, asked where he obtained the money for air fare, and what he was carrying with him. He was asked to open his computer, turn it on, and enter his password. He was then cleared for entry into Canada. (Tr. 118-19.)

As a result of the screening interview, Applicant was determined to have “the potential to present a security risk.” The screener commented that Applicant “appeared to be dishonest about his criminal record until [the] screener acknowledged that he had mentioned an arrest in his SF 86,” and that Applicant refused to list or add his employment with a city taxi and limousine commission. (GX 3 at 35.)

During a personal subject interview conducted about two weeks after the screening interview, Applicant discussed his foreign travel, including his trip to Canada. He told the investigator that he experienced no problems with customs or law enforcement during any of his travel. (GX 4 at 4.)

A Roman Catholic nun submitted an affidavit and testified at the hearing. She has known Applicant for more than 10 years. She uses the gas station where he works part time, and they usually converse when she stops for gas. She has found him to be very gracious, kind, dedicated, respectful, humble, and very grateful to be in the United States. She described him as “a beautiful human being who transcends any difference in our religion.” (AX A; Tr. 31-33.)

The operator of the gas station where Applicant works also submitted an affidavit and testified at the hearing. He has known Applicant for more than 13 years. He described Applicant as a good worker, honest, and very likable. He handles cash every day and has been very trustworthy. Applicant has become very close to the witness’s

father, the original owner of the gas station, and they have a father-son relationship. (AX C; Tr. 39-46.)

A retired lawyer and his wife, Mr. and Mrs. F, met Applicant at the gas station around 2009. Mrs. F learned to speak some Hindi during her business career, and she greeted Applicant in Hindi. Thereafter, she continued to say a few words in Hindi to him. As they became better acquainted, Applicant asked her for help with his citizenship application, which appeared to have been lost or stalled in the bureaucracy. Mr. F was successful in moving Applicant's file forward and they attended his naturalization ceremony. Mrs. F, who testified at the hearing, was very moved when Applicant took the copy of the Constitution that he had been given during the ceremony, kissed it, and held it to his chest with tears in his eyes. Applicant has since become a member of their family. He addresses Mrs. F as "Mom." Mrs. F suggested that Applicant seek employment as a linguist, because he speaks several languages fluently. Mrs. F testified that Applicant has very little contact with Pakistan. He is very concerned about his older sister, who is in poor health, but he is afraid to go to Pakistan because of what he has heard about surveillance and retribution by "sketchy characters." (Tr. 56-64, 68-69; AX B.) Mr. F submitted a letter stating that he found Applicant to be "diligent, truthful, modest, decent and reliable." (Answer at Exhibit 7.)

A U.S. civilian security screener who worked with Applicant in Kuwait submitted a statement describing him as a reliable, hardworking, and dedicated translator and an outstanding person. (AX D.) A U.S. soldier who worked with Applicant found him to be an insightful translator, and a straightforward, honest, dedicated person. (AX E.)

One of Applicant's college professors described him as a hardworking, courteous, dependable, and quick-learning student. (Answer at Exhibit 2.) Another professor considers him resourceful, reliable, and honest, and described him as "one of the most intelligent, most impressive students she had ever had at the college. (Answer at Exhibit 3.) A third professor stated that Applicant "set the bar for the class." (Answer at Exhibit 4.)

I have taken administrative notice that Pakistan is a parliamentary federal republic with whom the U.S. has had diplomatic relations since 1947. Until 1990, the United States provided substantial military aid to Pakistan, but it was suspended as part of the sanctions imposed in response to Pakistan's nuclear weapons program. After September 11, 2001, the sanctions were suspended in recognition of Pakistan's support for the U.S. campaign against terrorism, but its record in dealing with terrorists and militants has been mixed. It has persistently pursued militants it considers dangerous to Pakistan's interests, but it maintains its historical support of the Taliban and it considers militant groups to be important in its efforts to counter India's military and economic advantages. Al Qaeda, Taliban, and other military groups use the loosely-controlled border regions between Afghanistan and Pakistan as a safe haven. The leader of the Taliban operates openly in Pakistan. The former leader of Al Qaeda, Osama bin Laden, was killed by U.S. forces in Pakistan in May 2011. Travel to Pakistan is dangerous for U.S. citizens, because extremist groups in Pakistan target American and other Western

interests, senior Pakistani officials, and members of minority indigenous and religious groups. Pakistan has a poor human rights record and suffers from wide-spread government corruption.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant has four brothers (SOR ¶ 1.a), two sisters (SOR ¶ 1.b), and a friend (SOR ¶ 1.c) who are citizens and resident of Pakistan. The evidence shows that Applicant has three surviving brothers and two sisters, and that his “friend” is a casual acquaintance in Pakistan whom he contacted to inquire about his sister’s health.

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

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

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

When family ties to a foreign country are involved, the totality of an applicant's family ties well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(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); and

AG ¶ 7(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).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Applicant's close ties to his sisters in Pakistan and the activities of terrorists and violent extremist groups in Pakistan are sufficient to raise the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

Three mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. Applicant's close relationships with his siblings and the presence of terrorists and extremists in Pakistan preclude a finding that it is unlikely that Applicant would be confronted with a choice between the interests of his family and the interests of the United States.

AG ¶ 8(b) is not established. Applicant's sense of loyalty and obligation to his siblings, especially his sisters, is not "minimal." He has been a resident of the United States since November 1999 and a citizen since August 2010. He renounced his Pakistani citizenship and feels no loyalty to Pakistan. However, although he has strong family-like ties to Mr. and Mrs. F and bonds of affection with the previous owner of the gas station, he has no immediate family members in the United States. He has worked at various jobs, but he does not have an established career commensurate with his level of education. He does not own a home or have any significant financial interests in the United States.

AG ¶ 8(c) is established for Applicant's acquaintance in Pakistan. His contacts with his acquaintance were related to his concern for his ailing older sister, and he has not contacted her for about a year. However, it is not established for Applicant's contacts with his sisters. His contacts with his brothers are arguably infrequent, but he has not rebutted the presumption that they are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Guideline E, Personal Conduct

The SOR alleges that, on an unknown date, Applicant submitted copies of a false personal and commercial driver's licenses to a prospective employer (SOR ¶ 2.a). It also alleges that he was arrested in January 2007 for grand larceny, criminal possession of stolen property, and coercion, and he was "hesitant" to discuss his arrest during a security interview (SOR ¶¶ 2.b and 2.c). Finally, it alleges that during a security interview he was "extremely hesitant" to discuss his detention at the Canadian border and refused several times to discuss it (SOR ¶ 2.d).

The concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying conditions for Applicant's alleged lack of candor during his security investigation are:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(b): deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's alleged refusal to discuss his detention at the Canadian border does not fall under any of the enumerated disqualifying conditions under this guideline, but it does fall under the general concern in AG ¶ 15 about "any other failure to cooperate with the security clearance process."

The relevant disqualifying conditions for Applicant's alleged use of false documents to apply for a job and arrest for grand larceny, criminal possession of stolen property are:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or

duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The evidence concerning the alleged false driver's licenses is sparse. The record does not contain the copies allegedly presented to the potential employer. The copies provided by Applicant at the hearing appear authentic, and Applicant credibly and plausibly explained the reason for the difference between his customary signature and the signature on his SCA. I conclude that SOR ¶ 2.a is not established by substantial evidence.

Applicant's admissions and the documentary evidence presented by Department Counsel are sufficient to establish SOR ¶ 2.b. His arrest on felony charges is sufficient to raise the disqualifying conditions in AG ¶¶ 16(c), (d), and (e). However, I found his explanation of the circumstances of his arrest plausible and credible, and I have concluded that he has refuted the criminal conduct for which he was arrested. Thus, SOR ¶ 2.b is resolved in his favor.

The allegation in SOR ¶ 2.c that Applicant was "hesitant" during the discussion of his felony arrest does not allege any conduct having security significance. As he demonstrated at the hearing, he tends to pause before answering questions and he speaks very deliberately. Nervousness or reluctance to talk about an embarrassing incident is understandable and does not necessarily indicate lack of candor or deception. I found his explanation for initially denying any "interactions with law enforcement" during the screening interview plausible, credible, and corroborated by his disclosure of his arrest on his SCA. I conclude that he has refuted SOR ¶ 2.c.

For the reasons noted in the above discussion of SOR ¶ 2.c, the allegation in SOR ¶ 2.d that Applicant was "extremely hesitant" to discuss the incident at the Canadian border does not allege conduct having security significance. The record does not reflect what conduct, if any, triggered his detention, nor does it reflect what information caused the screening interviewer to question Applicant about it. The SOR does not allege any specific conduct at the Canadian border, nor does it allege that Applicant gave false or misleading information during the screening interview.

Applicant's initial refusal to discuss the Canadian border incident does not raise any enumerated disqualifying conditions, but it is covered by the general security concern raised by failure to cooperate with the security clearance process. Applicant's conflicting explanations about what happened at the border are not sufficient to raise AG ¶ 16(b), because falsification was not alleged, and there is no direct evidence showing which explanation is false. His explanation during the screening interview was more inculpatory than his explanation at the hearing, making it more likely that to be true than the exculpatory explanation he offered at the hearing

None of the enumerated mitigating conditions under Guideline E are applicable. I am satisfied that Applicant's initial refusal to discuss the incident is mitigated by the

momentary nature of his lack of cooperation and his subsequent description of the incident during the same interview.

The SOR does not allege that Applicant gave false or misleading answers during his PSI. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). My consideration of the fact that Applicant gave contradictory descriptions of the Canadian border incident is limited to my whole-person analysis, set out below. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have weighed the disqualifying and mitigating conditions under Guidelines B and E and considered the factors in AG ¶ 2(a). I have considered that Applicant has earned the trust and respect of his employer at the gas station and others who have interacted with him. I have also considered the evidence of Applicant's family ties in Pakistan and limited connections to the United States. His contradictory descriptions of the incident at the Canadian border raise uncertainty about how he would deal with a conflict of interest between the interests of the United States and the interests of his family. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on personal conduct, but he has not mitigated the security concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): **AGAINST APPLICANT**

 Subparagraphs 1.a-1.b: **Against Applicant**
 Subparagraph 1.c: **For Applicant**

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

 Subparagraphs 2.a-2.d: **For Applicant**
 Subparagraph 2.d: **For Applicant**

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge