



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



In the matter of:)
)
) ISCR Case No. 13-00306
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Department Counsel
For Applicant: *Pro se*

02/25/2014

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

On February 4, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (Item 4). On June 26, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 after September 1, 2006. The SOR detailed reasons why DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered (Answer) the SOR on August 30, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on October 23, 2013. A complete copy of the File of Relevant Material (FORM), containing nine

Government Items (Items 1-9), was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on November 17, 2013, and returned it to the Defense Office of Hearings and Appeals (DOHA). In response to the FORM, he timely submitted a document that I marked as Applicant Exhibit (AE) A, and admitted into the record without objection from Department Counsel. DOHA assigned the case to me on December 19, 2013.

Procedural Rulings

Department Counsel requested administrative notice (AN) of facts concerning Pakistan. (FORM). She provided nine supporting documents to show detail and context for those facts (Items I-IX). Applicant did not object to the request or documents, and I granted Department Counsel's request.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact

Applicant admitted the allegations contained in SOR ¶¶ 1.a and 1.b, and 2.a through 2.c. He denied SOR ¶¶ 1.c and 1.d. His admissions, including those made in a February 2013 Counterintelligence Focused Security Screening Questionnaire and Interview, are incorporated herein as findings of fact. (Items 3, 5.)

Applicant was born in Pakistan in 1966 and is 47 years old. He graduated from high school in September 1984. He earned a bachelor's degree from a Pakistani university in June 1988. He left the country in March 1989 to pursue an education in the United States. He traveled on a tourist visa, sponsored by a friend. He applied for permanent residency in January 1990. He became a naturalized U.S. citizen in July 2002. His Pakistani passport expired in 2002. His U.S. passport expires in 2022. (Items 4, 5.)

Applicant and his wife were married in the United States in May 1989. She was born in Afghanistan and is a naturalized U.S. citizen. They have two daughters, who were born in the United States and reside here. In February 2012 his wife began working as linguist for the U.S. Army. As of February 2013 she was still working for the Army. As of February 2013 his brother-in-law was also working as a linguist for the Army. (Items 3, 4, 8.) There is no evidence in the record indicating whether Applicant's wife or his brother-in-law currently work with the Army.

Applicant's parents were born in Pakistan. His mother is deceased. His father is a citizen and resident of Pakistan. He is a retired accountant. Applicant contacts him weekly. Applicant has two siblings, who were born in Pakistan. They are citizens and residents of Pakistan, as are their spouses. His sister is a housewife and her husband is a landlord. He contacts his sister once a week. His brother works in real estate and his wife is a housewife. He contacts his brother once a month. None of those family members are involved in political matters. (Items 3, 7.) He believes the possibility that any of his family members in Pakistan will encounter terrorists is minimal. (AE A.)

Applicant stated that his family members in Pakistan are financially stable. His father owns real estate in Pakistan that has an estimated value of \$2 million. Applicant stated that he and other family members will share in any inheritance from his father's estate, although he is unsure of the amount because his father does not have a will. (Items 3, 5.)

From 2006 to the present, Applicant has co-owned and operated a pizza parlor with a business partner. From September 2012 to the present, he has co-owned and operated a retail business with that same partner. He stated that he has created over 100 jobs during his 24 years in business and supported his family through his efforts. In February 2013 he began a position as a linguist, working with the U.S. Army in a Middle Eastern country. He maintains co-ownership of the businesses while working with the U.S. Army. His partner operates the businesses while he is out of the country. (Items 4, 5; AE A.)

Applicant currently does not own a house in the United States because he sold it to fund his business. He intends to purchase another piece of real estate in the future as his retail business improves. (AE A.)

Since July 2002 Applicant traveled to Pakistan five times. He visited there from February to June 2003; November 2008 to February 2009; October 2009 to December 2009; April 2010 to September 2010; and September 2012 until November 2012. He denied that he visited from February 2009 to January 2010. He resides with his father and sisters while there. (Item 3.) After leaving Pakistan in November 2012, he resided with his daughter in the United States. He pays for her apartment. (Items 3, 6; AE A.)

Applicant has a Pakistani National Identify Card for Overseas Pakistanis (NICOP) issued in 2009. He uses the card to "avoid visa requirements" while traveling to Pakistan. (Item 3.) He stated he would "surrender the mentioned card to Pakistan if it is an entitlement for dual citizenship, of which I did not know (sic)." (Item 3.) According to information published by the Embassy of Pakistan said card "is now a mandatory requirement for all Pakistanis working/residing abroad and Pakistanis holding dual nationality. NICOP offers unique privileges and facilities to its holder." (Item 9.)

During his February 21, 2013 Counterintelligence-Focused Security Screening Questionnaire, Applicant stated that "he returns to Pakistan so frequently because it is considered his hometown, and "it is cheap to live." (Item 5.) He further stated that if his

position with the Army does not work out, he would consider returning to Pakistan. (Item 5.)

In his December 3, 2013 response to the FORM, Applicant wrote that should he not secure a security clearance, he intended to start a software company and employ people in Pakistan because of the cheaper labor costs. He noted that he may then live there “for a while until the software is made.” (AE A.) He denied that he previously stated that he intended to live there permanently. (AE A.) His “home country of residence” is the United States, where his immediate family resides. (AE A.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability.

Pakistan

I take administrative notice of the facts set forth in the Administrative Notice documents (FORM) concerning Pakistan, which are incorporated herein by reference. Of particular significance are Pakistan’s history of political unrest, and the presence of the Taliban and al-Qaeda, terrorist organizations, which continue to assert power and intimidation within the country and the bordering country of Afghanistan. Safety and security are key issues because these terrorist organizations target United States interests in Pakistan and nearby Afghanistan by suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country’s human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. Few sections of Pakistan are safe or immune from violence, and the government has difficulty enforcing the rule of law.

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 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to classified information seeks to enter 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 C, Foreign Preference

AG ¶ 9 explains the security concern pertaining to foreign preference 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.

AG ¶ 10 describes a condition that could raise a security concern and may be disqualifying in this case:

(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:

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

In 2009 Applicant obtained a NICOP card to ease his travel to and from Pakistan, after becoming a U.S. citizen in July 2002. Said card is specifically issued to individuals holding dual citizenship with Pakistan. The evidence supports the application of the above disqualifying condition. However, the evidence does not support the application of a disqualifying condition under Guideline C as a consequence of Applicant's periodic travels to Pakistan since July 2002, or, the possibility that he may inherit money in the future. Those facts do not demonstrate a foreign preference, hence said allegations contained in SOR ¶¶ 1.c and 1.d are found in his favor. He resided with his daughter in the United States after leaving Pakistan in November 2012, until he began his position with the Army. The allegation listed in SOR ¶ 1.b is also found in his favor.

AG ¶ 11 provides a condition that could mitigate security concerns arising under this guideline pertinent to the NICOP:

(b) the individual has expressed a willingness to renounce dual citizenship.

Applicant stated in his December 2013 response to the FORM that he is willing to surrender his NICOP card, if necessary. He was unaware that it represented dual citizenship. Without additional clarification of his explanation, this allegation is not mitigated.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern pertaining to foreign influence as follows:

Foreign contacts and interest 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.

AG ¶ 7 sets out two conditions that could raise a security concern and may be disqualifying 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; and

(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.

The mere circumstance of close family ties with a family member living in Pakistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or inducement. The risk of coercion, persuasion, or duress is 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 collection operations against the United States, or is a known terrorist haven. The relationship of Pakistan with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Pakistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist family members living in Pakistan.

While there is no evidence that intelligence operatives or terrorists in Pakistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Pakistan has an enormous problem with terrorism. Applicant's relationships with his father, brother, and sister living in Pakistan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist family members by providing sensitive or classified information. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns in this case are:

(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; and

(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) and 8(c) have limited applicability. Since leaving Pakistan and becoming a U.S. citizen, Applicant has maintained regular and ongoing contact with his father and two siblings, who are citizens and residents of Pakistan. While his loyalty and connections to his family members in Pakistan are positive character familial traits, for security clearance purposes, his strong and consistent connections to his family over the years negate the possibility of mitigation under either mitigating condition in this case. Although Applicant has been working for the Army for a period of time, he failed to provide sufficient evidence to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Pakistani citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) has some application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established some longstanding connections to the United States. He has owned and operated a business in the United States for over 24 years with a business partner. His wife and children are U.S. citizens and residents. He has been working with the U.S. Army in the Middle East since February 2013. He asserted that the United States is his "home country."

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 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. I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. My Guideline C and B analysis is applicable to the whole-person analysis well.

There are factors that weigh in favor of granting Applicant a security clearance. He established some connections to the United States, including U.S. citizenship since 2002. His wife and two children are U.S. citizens and residents. He co-owns and manages two businesses, one of which has been operating for over 20 years. His wife and brother-in-law have worked for the U.S. Army in the Middle East.

There are also factors that weigh against granting Applicant a security clearance, which arise from his history of connections to Pakistan. Applicant was born in Pakistan and spent his first 23 years there. His father, two siblings, and their spouses are citizens and residents of Pakistan. Since 2002 he has spent long periods of time there with his family because it is his “home town” and inexpensive to live. In February and December 2013, he said that he may start another business which he will develop with the help of Pakistani labor. He will live there while starting that company. He obtained a NICOP card in 2009 to ease his travel in and out of the country. Those factors demonstrate Applicant’s deep and ongoing attachments to Pakistan. Additionally, his current work with the U.S. Army creates a greater risk of potential coercion, should terrorists learn of his work with the Army and that he has family members residing in Pakistan.

Since February 2013 Applicant has worked with the U.S. Army as a linguist in the Middle East. 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.” See ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). While Applicant’s service merits consideration and is a positive factor in this case, it is not enough to overcome the alleged security concerns.

At this time the record leaves unanswered questions as to Applicant’s present eligibility and suitability for a security clearance. He has not sufficiently carried his burden to mitigate the foreign preference and foreign influence security concerns.

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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Paragraph 2, Guideline B:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Subparagraph 2.b:

Against Applicant

Subparagraph 2.c:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Shari Dam
Administrative Judge