



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 13-00340
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the foreign influence concerns. His family and close friends in Pakistan place him at a heightened risk of foreign exploitation. Clearance is denied.

Statement of the Case

On May 29, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence). Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record (Answer).

On August 8, 2013, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government’s proposed findings of fact, request for administrative notice regarding Pakistan, and six documentary exhibits, which were marked Government Exhibits (Gx.) 1 through 6. On September 23, 2013, Applicant responded to the FORM (Response) and submitted four exhibits, which were marked Applicant’s Exhibits (Ax.) A through D. All exhibits are

hereby admitted and made a part of the record, without objection.¹ On October 17, 2013, I was assigned Applicant's case. The record closed on November 25, 2013.²

Findings of Fact³

Applicant is in early forties. He was born in Pakistan and earned a law degree in Pakistan prior to immigrating to the United States. He moved to the United States after being threatened by criminal elements within Pakistan. Applicant's father, who held a high-level position in the Pakistani government, used his connections with the U.S. Government to get Applicant a visa to enter the United States. After immigrating to the United States, Applicant met his former wife and they married. He became a U.S. citizen and worked for several years in the United States, including as a federal contractor; before accepting his current position as a linguist with the U.S. military in Afghanistan. Applicant married his current wife, who was also born in Pakistan, in about 2009. They have one child in common, who was born in the United States. (Gx. 5 – 6)

Applicant's parents, two of his siblings, his mother-in-law, and "numerous other family members and friends are citizens and residents of Pakistan." (Gx. 1, 4) A large segment of Applicant's family and some close friends either currently or previously worked for the Pakistani government, including in high level posts in the Pakistani government. One of Applicant's foreign family members used to work for a foreign intelligence service until recently.⁴ (Gx. 4 – 6; Response)

Applicant's parents have U.S. residency status, but due to their advanced ages and medical conditions live in Pakistan. (Response at 2) Applicant's father has substantial property interest in Pakistan, with a value of somewhere between one and three million U.S. dollars. Applicant stands to inherit at least a quarter of his father's estate. (Gx. 1, 4 – 6) Applicant has frequent contact with his foreign family members and friends. He has kept his work for the U.S. Government secret from his family and friends, except for his parents. Applicant states that his parents support his work on behalf of the United States, and his family and friends support the United States and its policies in general. (Response)

¹ I gave no weight to portions of Gx. 6, which contain the findings of another U.S. Government agency as to the potential security risk posed by Applicant's connections to Pakistan. Gx. 6 at 3 - 4.

² The FORM contains a list of the official documents that the Government relied upon in their request for administrative notice. The documents were sent to Applicant with the FORM, but not provided to the Hearing Office. On November 21, 2013, I issued an order to the Government to provide the listed documents. Subsequent thereto, copies of the documents were provided and re-marked Gx. 7 – 15. The Government submitted an updated version of Gx. 13. Applicant confirmed he received all the documents cited in the FORM and did not object to their admission, including the revised Gx. 13. Accordingly, Gx. 7 – 15 are hereby admitted. My order and correspondence with the parties is marked Hearing Exhibit (Hx.) I.

³ I have generalized the facts to further protect Applicant's privacy.

⁴ Applicant notes that SOR, ¶ 1.e, incorrectly identifies which of his cousins worked for a foreign intelligence service. The SOR is hereby amended by deleting the name of the cousin listed in the SOR.

Applicant has worked as a linguist for the U.S. military in Afghanistan for nearly three years. He has received numerous commendations and recommendations for his work. (Ax. A - D) His employer considers him “loyal and faithful,” and has entrusted Applicant “to handle our most sensitive engagements.” (Ax. B) His employer further writes that Applicant “serves daily in a hostile environment, where each mission carries the risk of personal injury.” (Ax. B)

Pakistan is a parliamentary federal republic. Pakistan and the United States have been allies in the war against international terrorism since the attacks of September 11, 2001. However, the United States has expressed concern regarding the Pakistani government’s commitment and the apparent role of its intelligence agency in supporting the Haqqani Network, a designated foreign terrorist organization. (Gx. 8, 10 - 11)

The United States is also concerned about Pakistan’s apparent inability to control its borders. The core of Al-Qa’ida is based in Pakistan and its former leader Osama bin Laden lived in Pakistan for many years, before being killed by U.S. forces in 2011. Terrorist and other extremist elements operate from safe havens within Pakistan. The presence of these groups poses a significant threat to U.S. citizens and U.S. interests. These groups have carried out attacks against the United States and its citizens. They have also committed major terrorist attacks against the Pakistani government and its citizens. As for the Pakistani government, the U.S. State Department notes that elements within the government continue to commit major human rights abuses, including extrajudicial killings, disappearances, and torture. The failure to prosecute these abuses has led to a culture of impunity. (Gx. 7 - 15)

Applicant avers that the conditions existing within Pakistan and its government’s policies do not reflect his family or his close friends position. He notes that he has practiced operational security on a day-to-day basis over the past three years, and no foreign group or person has ever tried to influence or pressure him. (Response at 7)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.⁵

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. 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 an 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.⁶

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.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline B, Foreign Influence

The foreign influence concern is set forth at 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

⁵ See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

⁶ ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (“Security clearance adjudications are predictive in nature, and it is foreseeable that persons with prior good records may nevertheless engage in conduct or undergo circumstances that raise doubts about their future judgment or reliability.”)

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.

Applicant's connections and contact with his foreign family members and close friends raises the foreign influence concern, and specifically the following disqualifying conditions under 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

(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.

Furthermore, although Applicant currently has no financial or property interest in Pakistan, he stands to inherit approximately twenty-five percent of his father's substantial holdings in Pakistan. The current value of Applicant's share of this inheritance is approximately \$750,000. This substantial financial interest in Pakistan could be used to influence Applicant directly or through his family. This evidence also establishes AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

Applicant's substantial connections to Pakistan do not end the foreign influence analysis. AG ¶ 8 sets forth a number of mitigating conditions that could mitigate the concern. I have considered all the mitigating conditions under AG ¶ 8 and the following were potentially raised by the evidence:

(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;

(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;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts . . . from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant disclosed his connections to his relatives and close friends in Pakistan on his security clearance application and then discussed them thoroughly during the ensuing background investigation. Applicant's honesty, however, does not mitigate the significant security concerns raised by his family members and friends in Pakistan.⁷ Several of Applicant's family members and close friends have held or currently hold positions within the Pakistani government, making them targets for extremist elements and terrorists operating within Pakistan.⁸ Also, the tenuous relationship of the United States and Pakistan raises the risk that even subtle forms of foreign influence could be exerted on Applicant through his family members and close friends.⁹ Although Applicant is no longer in continuous contact with some of the individuals identified in the SOR, he is close to and continues to have frequent contact with his family, especially his parents, who live in Pakistan. Notwithstanding Applicant's deep relationships in the United States and his service to the country over the past three years, his current circumstances continue to pose a heightened risk of foreign influence, especially in light of the threat posed by terrorists and other extremist elements operating within Pakistan.¹⁰ Accordingly, I find that AG ¶¶ 8(c) and 8(e) partially apply, but are insufficient to mitigate the significant security concerns at issue. At the same time, I note that this finding is "not a comment on Applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."¹¹

⁷ ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (honesty and "[e]ven years of safeguarding national security information may not be sufficient to mitigate" security concerns at issue).

⁸ ISCR Case No. 09-06457 (App. Bd. May 16, 2011) (security concerns not mitigated because foreign family member's held a high-level position in foreign government, which made him a high-value target for terrorist).

⁹ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009) (security concerns not mitigated because foreign family member held a high-level position in foreign government).

¹⁰ See generally ISCR Case No. 11-01920 at 2 (App. Bd. Dec. 8, 2011) ("Applicant's family contacts in Pakistan, that country's human rights record, the presence of terrorist activity there, and other geopolitical factors support the Judge's (adverse) decision").

¹¹ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹² I considered Applicant’s substantial ties to the United States. I also took into account Applicant’s work in Afghanistan, and notably the sacrifices and the danger he has encountered over the past three years in support of the U.S. mission in Afghanistan. However, “[e]ven good people can pose a security risk because of facts and circumstances not under their control.”¹³ Despite the favorable record evidence, Applicant’s connections to Pakistan are substantial and he remains vulnerable to pressure and influence from foreign entities, some of which are violently opposed to the national security interest of the United States. Consequently, I must resolve the concerns raised by Applicant’s connections to Pakistan in favor of national security and deny his request for a security clearance.¹⁴

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline B (Foreign Influence): AGAINST APPLICANT
Subparagraphs 1.a – 1.i: Against Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant’s request for a security clearance is denied.

Francisco Mendez
Administrative Judge

¹² The non-exhaustive list of adjudicative factors are: (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.

¹³ ISCR Case No. 01-26893 at 9-10 (App. Bd. Oct. 16, 2002).

¹⁴ AG ¶ 2(b).