



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



In the matter of:)	
-----)	
)	ISCR Case No. 13-00380
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

April 7, 2014

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on January 31, 2011. (Item 5.) On October 16, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an Answer (Item 4) to the SOR on November 5, 2013, and requested a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on December 26, 2013. Applicant received the FORM on January 16, 2014, and was given 30 days to submit any additional information. Applicant submitted additional information in a timely fashion, which is admitted without objection by Department Counsel. (Applicant Exhibit A.) The case was

assigned to me on February 19, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Pakistan. Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 23, has a GED, and is single. She has been employed by a defense contractor since January 2011 as a linguist in Afghanistan, and seeks a security clearance in connection with her employment in the defense industry. Applicant admitted all the SOR allegations with two exceptions. She denied allegation 1.b. Those admissions are findings of fact. The following facts are based on her statements in Item 4, Applicant Exhibit A, a "Counterintelligence-Focused Security Screening Questionnaire, and a DoD Personal Subject Interview contained in a Report of Investigation. (Items 6 and 7.)

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness. Applicant was born in the United States of Pakistani parents. She lived with her family in Pakistan from April 2000 through April 2001. She lived by herself in Pakistan from August 2005 through March 2007, which will be further discussed below. Until she left to take her current job in Afghanistan Applicant lived in the United States from 2007. (Item 6 at 3.)

1.a. Applicant admits her mother is a citizen of Pakistan, currently residing in the United States as a resident alien.

1.b. Applicant denies that her father is a citizen of Pakistan. She states in her Answer that he was a resident alien in 2011, when she had her interviews, but he became an American citizen in 2013. In Applicant Exhibit A at page 1 she provided validating information for his citizenship status. He lives in the United States.

1.c. Applicant admits her stepmother is a citizen and resident of Pakistan. Applicant speaks to her about twice a month. According to Applicant, as of 2011 her father had not filed the requisite paperwork to sponsor his new wife. (Item 7 at 10.)

1.d. Applicant admits that she has a half-sister who is a citizen and resident of Pakistan. Applicant speaks to her when she talks to her stepmother.

1.e. Applicant admits that she has a paternal uncle who is a citizen and resident of Pakistan. She has no contact with him, or any of her uncles.

1.f. Applicant admits that she has three maternal uncles who are citizens and residents of Pakistan. She has no contact with them, for reasons that will be further discussed below.

1.g. Applicant admits that her mother and maternal uncles were involved in drug trafficking in 2009, which resulted in her mother's arrest. Applicant was a minor at this time, and had no knowledge of the activities. This situation will be further discussed below.

1.h. Applicant admits that her maternal grandmother is a citizen and resident of Pakistan. She has no contact with this person.

1.i. Applicant admits that she lived in Pakistan from August 2005 until March 2007. She made this trip using her American passport, having a received a long-term visa from the Pakistani government. (Item 5 at 40-44.) The purpose of this trip will be discussed further below.

1.j. Applicant admits that her father owns property in Pakistan. Concerning this property she states in Applicant Exhibit A at 22:

[Y]es my father does have property at Pakistan. It [the property] was inherited but that has nothing to do with me. My father is a married man with a family, now that all belongs to them. I have no interest in claiming anything. . . . That property . . . is very unlikely to result in any conflicts, and it definitely can not be used to influence or manipulate or even pressurize me in any way. I do not care for it.

Applicant's relationship with her family, including her parents, is currently very strained, if not non-existent. There are two reasons for that. First, in approximately 2004, Applicant was sexually assaulted by a family friend, who was also her teacher. Due to family circumstances, and cultural concerns, Applicant decided that she could not tell her family. She escaped the situation by moving to Pakistan temporarily in May 2004. She returned to the United States in September of that year. Unfortunately, the man who abused her was still interacting with her family. Finally, in August of 2005 she returned to Pakistan. She remained there until March 2007. She states, "Your Honor there was only so much abuse I could take. That was my main reason to flee to Pakistan away from this animal I was confronted with." (Applicant Exhibit A at 22.)

Concerning that time in her life Applicant also states:

Your Honor, no person in their right mind would want to leave the United States and their family. There were many events leading to my decision of going to Pakistan as a minor. Please try and put yourself in my position, fourteen years old raped, unable to tell parents all that has happened because both parents are ill, parents are also going through a divorce and last but not least the guy that raped you still comes to your home to further abuse you. Even if you try and imagine all this it is very unlikely that even the imagination will come close to what I have gone through. (Applicant Exhibit A at 21.)

Finally, in June 2007 Applicant told her mother about the rape by the family friend. The friend was arrested, tried and convicted of rape and, according to Applicant, is currently serving a 28 year sentence.

The second incident concerns her mother's involvement with drug trafficking. Applicant returned to the United States on March 9, 2007. Less than two weeks later, on March 22, 2007, Applicant's mother was arrested for drug trafficking charges that also involved Applicant's uncles in Pakistan. Applicant had recently turned 16. Applicant's mother was eventually arrested and convicted of drug offenses and is on probation. Applicant states, "I can not change the past. . . . I also can not as a little kid who did not know what was going on stop my mother from doing what she did for her brothers. Your Honor, had I known I would have stopped her or at least tried. . . . My mother has made some serious mistakes. I keep out of her way." (Applicant Exhibit A at 22-23.) (See Item 6 at 7-8.)

Applicant elaborated:

[E]verything that has happened over the past few years has caused me to keep to myself. I enjoy and prefer to be alone. . . . I am my own person. . . . I do not have any foreign influence over me. I have withdrawn myself from my family, from everyone. . . . Who ever I am today is due to me being independent. After all that has happened, mind you I did not bring it upon myself - no one would want to associate oneself with such a horrid mess.

I can not change what decisions other people in and around my life have made, but what I do and can control is my association with people in general now. I choose to keep myself away from all and every one. I have not contacted my uncles since 2010. I do not even know if they are dead or alive but to be honest Your Honor I do not care either way. When some one asks me for my relatives I tell them they have all died, because they have in my heart passed away from me. (*Id.*)

Regarding Pakistan in general the Counterintelligence Screening Questionnaire states at question 2, "SHE [Applicant] feels Pakistan is fine as long as the person has money. If you cannot afford the bribes then it is not a nice place." (Item 6 at 4.)

I also take administrative notice of the facts concerning the Islamic Republic of Pakistan, as set forth in the FORM in the Request for Administrative Notice and its attached documents I through IX. Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, and other militant extremist groups that generate instability and openly attack police and military forces of the Pakistani government, as well as the local populace and U.S. persons and interests.

Paragraph 2 (Guideline E - Personal Conduct)

2.a. The Government alleges in this subparagraph that the facts set forth under subparagraph 1.g, above, raise questions about her reliability, trustworthiness and ability to protect classified information.

2.b. The Government alleges in this subparagraph that Applicant is ineligible for clearance because she made material false statements during the clearance screening process.

Applicant filled out an e-QIP on January 31, 2011. (Item 5.) At that time Applicant was 19 years old, and had never held a job. It is probable that she had never previously filled out a form like the questionnaire.

Question 20c asked Applicant what foreign countries she had visited within the past seven years. She recorded visits to Pakistan in 2004, 2005 and 2007. When asked for the duration of these visits she put down one day. That answer was, of course, incorrect since Applicant had stayed in Pakistan for extended periods between 2004 and 2007.

A week after filling out the form, February 7, 2011, Applicant received a counterintelligence-focused interview, from which a questionnaire was compiled. (Item 6.) She brought her current U.S. passport and two expired U.S. passports with her to the interview.¹ In the section of the questionnaire entitled "Foreign Residence," the visit of the Applicant to Pakistan from August 2005 through March 2007 is fully set out, including the reasons for her staying in Pakistan for an extended period of time. (Item 6 at 3.)

On February 16, 2011, Applicant was interviewed by an investigator affiliated with the Office of Personnel Management. (Item 7.) Applicant brought the same three passports with her to this interview. As part of the personal subject interview Applicant

¹The passports cover the periods from April 1998 through April 2003, May 2004 through May 2009, and January 2011 through January 2021. Copies of the passports were made by the agents at the times of the interviews. (Item 5 at 33-44.)

discussed in great detail her travels to Pakistan in 2004 and 2005 through 2007. (Item 7 at 5, 13-14.)

Applicant maintains her stating that these trips lasted just one day was nothing more than a mistake:

If I had falsified information, why would I have taken my passports with me to the CI and subject interview? In regard to item #6 my subject interview page number three and question number twelve it can be seen I had brought my passports along with me. They were also looked through by the person doing the subject interview.

I have no reason to falsify such information. I provided everything else in truth and honesty. The travel was not an issue for me at all. It was truly an oversight. I need not to [sic] hide this. . . . If I was falsifying some thing I would completely leave that trip out, why would I put a day trip to Pakistan in there? It makes no sense and for an average middle class family girl it is quite impossible as well. (Applicant Exhibit A at 23.)

Finally, concerning her job and herself Applicant stated:

I try to be strong and I tried to surpass all that has happened. Finally I did. I have been in Afghanistan as a Linguist for almost 3 years. Absolutely loving what I do. I have worked very hard with our troops in Afghanistan. Had I been of any trouble I would not have lasted long here. I did[.] I managed to get by without a single negative counseling. I am very proud of myself for that Your Honor. (*Id.*)

Applicant provided no other evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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(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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been

established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under 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.

Applicant has family and property connections to Pakistan. The following disqualifying conditions under ¶ 7 apply to this case based solely on the facts:

(a) contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person . . . that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information; and

(e) a substantial . . . property interest in a foreign country, . . . which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 apply to this particular case, given her particular background:

(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; and

(f) the value or routine nature of the foreign . . . 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 is a 23-year-old native-born American woman, who is working her first job. She has several extended family members who are citizens of and live in Pakistan. Because of the criminal situation involving her mother and uncles, Applicant has minimal to no contact with any of them. She had nothing to do with her mother's crime, and indeed was a minor, barely 16, at the time of the incident. Her travels to Pakistan for extended periods were in response to the serious crimes, of which she was a victim. She has responded with candor and courage to the situations life threw at her.

Applicant's father has properties in Pakistan, but he has a new family and Applicant has no interest in them. In addition, her father is now an American citizen.

Based on my analysis of the available information, Applicant has overcome the adverse inference of her family members' presence in Pakistan, as well as her father's property interests. Guideline B is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern for Personal Conduct is set out in AG ¶ 15:

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

Turning first to subparagraph 2.a. This allegations alleges that the conduct of Applicant's family members, about which she knew nothing and was a minor at the time, shows unreliability and untrustworthiness on the part of the Applicant. In other words, the Government asserts that the crime of the parent casts doubt on the character and judgment the child. There is no allegation or evidence to connect Applicant to this

incident. To the contrary, her response to it was to sever contact with those involved. It has no security significance and is found for Applicant.

Next, subparagraph 2.b concerns Applicant's answers on her e-QIP (Item 5). Regarding that allegation I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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.

Applicant freely admitted traveling to Pakistan in 2004, 2005, and 2007, but put down on her e-QIP that the travel lasted one day, when it obviously did not. The Government alleges that this failure was an intentional falsification. Applicant has consistently denied that and indicated that it was simply a scrivener's error on her part, which she quickly corrected upon being interviewed twice by Government investigators within days after filling out the questionnaire. In discussing this incident it is also important to remember that Applicant was just 19 years old at the time, and applying for her first job.

When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission or misstatement, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).)

The record shows that Applicant has been fully forthcoming with the Government. As stated, within days after filling out the e-QIP Applicant was interviewed by two Government investigators. She brought her current passport, and two expired passports, to each interview. Her travels are accurately set out in the reports prepared by the investigators. Copies of the passports were made and are in the file. There is little more Applicant could do at the time to make sure the Government had a complete picture of her foreign travels.

Based on the available evidence, it is found that Applicant did not intentionally falsify her e-QIP. In addition, analyzing this case using the mitigating factors also supports this conclusion. Based on the facts the following apply under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

For all the reasons stated above, Paragraph 2 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The administrative judge should 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and Guideline E analysis is applicable to the whole-person analysis as well. Based on that analysis, I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of her foreign connections and alleged personal conduct. She is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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.

WILFORD H. ROSS
Administrative Judge