



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 13-00423 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

11/26/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 29, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The DOD acted 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 DOD on September 1, 2006.

Applicant answered the SOR on June 25, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on August 12, 2013. The FORM was mailed to Applicant and

he received it on September 22, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant declined to submit any additional information. The case was assigned to me on November 12, 2013.

Procedural Ruling

Department Counsel requested that I take administrative notice of facts concerning the country of Pakistan.¹ Department Counsel provided supporting documents that verify detail and provide context for these facts in the Administrative Notice request. See the Pakistan section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Pakistan.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.² Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports.³

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 43 years old. He was born in Afghanistan in 1970. His mother moved him and his brother to Pakistan in 1980. In 1989 he came to the United States under refugee status, sponsored by his sister. He became a naturalized citizen of the United States in March 1997. He is married and has two children. Both his wife and children are U.S. citizens. He works for a government contractor. He has worked for this company since June 2012. He holds an associate's degree. He has never held a security clearance and he has no history of military service.⁴

Applicant has the following relatives and friends who are residents and citizens of Pakistan:

1. One sister-in-law lives in Pakistan and is a homemaker. There is no information in the record concerning her age. In June 2012, in completing his security

¹ FORM p. 2.

² 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)).

³ See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

⁴ Item 5.

clearance application (SCA) and his counter-intelligence (CI) paperwork for the military, Applicant indicated that he had contact with her “in person or telephone” two times a year from 1996 through the present. In his June 2013 answer to the SOR, he stated that he severed contact with his sister-in-law three years ago and does not know her whereabouts or well-being.⁵

2. One brother-in-law lives in Pakistan and is a banker. There is no information in the record concerning his age. In June 2012, in his counter-intelligence (CI) paperwork for the military, Applicant indicated that he had contact with him “once a month.” He did not state at the time that the relationship had ended. In his June 2013 answer to the SOR, he stated that he severed contact with his brother-in-law three years ago and does not know his whereabouts or well-being.⁶

3. His friend SA lives in Pakistan. Applicant estimated SA’s age as 45 years old. He indicated in his SCA that he has known SA since June 2010 and that he has monthly telephone contact with him. In his answer to the SOR, Applicant stated that SA was “added to my face book page long ago but I pulled [his] name of my face book friends because I didn’t know [him].” He also stated that he did not have any kind of contact with SA.⁷

4. His friend KH lives in Pakistan. Applicant estimated KH’s age as 38 years old. He indicated in his SCA that he has known KH since 2011 and that he has twice yearly internet contact with him. He provided the same information in his CI documents. In his answer to the SOR, Applicant stated that KH was “added to my face book page long ago but I pulled [his] name of my face book friends because I didn’t know [him].” He also stated that he did not have any kind of contact with KH.⁸

Pakistan

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leaders of the Taliban operate openly in Pakistan, as do extremists from the Pakistani Taliban and Al Qaida. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

⁵ Items 4 (p. 6), 5 (p. 45), 6 (p. 14).

⁶ Items 4 (p. 6), 6 (p. 15).

⁷ Items 4 (p. 6), 5 (p. 30).

⁸ Items 4 (p. 6), 5 (p. 45), 6 (p. 15).

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to Al Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, Al Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high-profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistani civilians and security force personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistani government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail without the requisite court approval, and also monitor phones and electronic messages. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut off military aid to Pakistan for several years.

After September 11, 2001, Pakistan pledged its alliance with the United States in counterterrorism methods. Pakistan committed to elimination of terrorist camps on the Pakistan-Afghanistan border and subsequently sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts, and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005. On May 1, 2011, U.S. Special Forces personnel raided a large al-Qaida compound located in Pakistan where they found and killed Osama bin Laden, the leader of al-Qaida. He was found in a residential neighborhood in Pakistan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 indicates 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.

Applicant gave conflicting information about the frequency and recency of contacts with his brother-in-law, sister-in-law, and his two friends. Regardless, the evidence establishes that contacts with these relatives and friends existed. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, including in-laws. Applicant attempted to rebut this presumption by claiming that he severed ties with his in-laws three years ago and does not know their whereabouts. He also claims to have discontinued contact with his two internet friends. However, he provided other information that conflicts with both of these claims. Applicant’s relationships with his relatives and friends living in Pakistan are sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” His relationships with residents of Pakistan create a concern about Applicant’s “obligation to protect sensitive information or technology” and his desire to help his relatives and friends who are in Pakistan. For example, if the Pakistan Government or terrorists in Pakistan wanted to expose Applicant to coercion, it could exert pressure on his relatives or friends living there. Applicant would then be subject to

indirect coercion through his relationship with his relatives or friends and classified information could potentially be compromised.

The mere possession 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.

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 and friends are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. 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 relatives and friends living in Pakistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives or friends living in Pakistan who might be coerced by terrorists or other governmental entities in Pakistan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁹ Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified or economic information from or through Applicant, or his relatives living in Pakistan, it is not possible to rule out such a possibility in the future. Although Applicant's communications with his relatives, he continues to feel an obligation to them and affection for them. Applicant's concern for his relatives is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. Both AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The relevant conditions under AG ¶ 8 that could mitigate foreign influence security concerns are as follows:

(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.

Applicant has limited contact with his relatives and two friends, but the nature and extent of those relationships is unclear due to Applicant's conflicting information. The amount of contacts between an applicant and relatives living in a foreign country is not the only test for determining whether someone could be coerced through their relatives. Because of his connections to his brother-in-law, sister-in-law, and his two friends, Applicant is not able to fully meet his burden of showing there is little likelihood that he could create a risk for foreign influence or exploitation. Although Applicant has been a U.S. citizen since 1997, I cannot determine that Applicant would resolve any conflict of interest in favor of the U.S. interest.

Applicant's relationships in the United States must be weighed against the potential conflict of interest created by his relationships with his relatives and friends who live in Pakistan. There is no evidence that terrorists, criminals, the Pakistan government, or those conducting espionage have approached or threatened Applicant, his relatives, or friends in Pakistan to coerce Applicant, his relatives, or friends for classified or sensitive information. Applicant has not yet received access to classified information and as such, there is a reduced possibility that Applicant or his family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' recent relationship with Pakistan, especially Pakistan's systematic human rights violations and the ever-present danger from terrorists and those who seek to damage U.S interests. AG ¶¶ 8(a), 8(b), and 8(c) have limited applicability.

In sum, the primary security concern is Applicant's relationships with his relatives and friends, who live in Pakistan. They are readily available for coercion. Although the Pakistan government's failure to follow the rule of law further increases the risk of coercion, the major cause of concern is the prevalence of terrorists in Pakistan.

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. 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 the facts and circumstances surrounding this case. The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant's relatives and friends live in Pakistan, and Applicant has provided conflicting information about the nature of his relationship with them. Terrorists have killed hundreds of Pakistani citizens in the last several years, and there is a heightened risk they could attempt to coerce Applicant through his relatives or friends to obtain classified information. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, Foreign Influence.

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:

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| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.d: | 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.

Robert E. Coacher
Administrative Judge