



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



In the matter of:)	
)	
)	ISCR Case No. 13-00433
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/09/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and the file of relevant material (FORM), I conclude that Applicant has mitigated the foreign preference security concerns, but has not mitigated the concerns raised under the guideline for foreign influence. His request for a security clearance is denied.

Statement of the Case

On June 12, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guidelines B (foreign influence) and C (foreign preference). In his July 4, 2013 Answer to the SOR, Applicant admitted all allegations except ¶ 1.c under

Guideline C, and ¶ 2.f under Guideline B. Applicant also requested a decision without a hearing.

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a FORM dated September 13, 2013. He forwarded it to Applicant, along with 13 documents (Items 1 through 13). Applicant received the FORM on September 25, 2013. He was given 30 days to respond with documentation to refute or mitigate the allegations. Applicant timely submitted a response dated September 28, 2013. (Response) The case was assigned to me on November 13, 2013, for an administrative decision based on the record.

Procedural Matters

Department Counsel requested I take administrative notice of information related to Pakistan. Administrative or official notice is the appropriate type of notice used for administrative proceedings.¹ The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. The most common basis for administrative notice at ISCR proceedings is notice of facts from Government reports. I take administrative notice of facts relating to Pakistan set forth in the Government documents provided by Department Counsel. (Item 13)

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings.

Applicant is 53 years old and was born in Pakistan. From 1976 to 1994, when he was 16 to 34 years old, he served in the Pakistani military, working in aircraft communications as a chief technician/warrant officer. He earned a bachelor's degree in English, economics, and Pashto literature. In 1978, Applicant married a Pakistani citizen. They had six children. He came to the United States in 1995, and became a naturalized U.S. citizen in 2005. His wife is also a U.S. citizen. Their six adult children are citizens of the United States. As of 2009, all six children were residents of the United States. Since moving to the United States, Applicant traveled to Pakistan in 2003, 2009, and 2010. He worked in sales from 1995 to 1998, as a grocery stocker from 1996 to 2000, and as a technician from 1999 to 2009. (Response; Items 2, 4, 5, 8, 9, 11)

Applicant began his current position as a linguist in 2009. He first applied for a security clearance in July 2009, but was denied an interim security clearance in September 2009. He has been working in a combat zone since June 2011. He has

¹ 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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

participated in missions and been under enemy fire. He has received certificates of appreciation, as well as a certificate of achievement in 2011, and the commander's award for civilian service for his work from December 2011 to October 2012. Applicant submitted several character letters which describe him as professional under trying circumstances, discreet in handling sensitive activities, and serving with the utmost loyalty and honor. His squad leader stated Applicant had participated in 70 combat patrols and two air assault missions to remote areas, and described him as one of the top interpreters supporting the war on terror. (Response; Items 2, 4)

When Applicant retired from the Pakistani military in 1994, he received a lump-sum payment of \$6,300. He used the funds the following year when he and his family moved permanently to the United States. At that time, Applicant also received a military pension from the Pakistani government, amounting to approximately \$56 per month. He received the pension from September 1994 to August 1995. He then immigrated to the United States. From September 1995 to December 1997, Applicant allowed his father to receive Applicant's pension to use for his own support. In 1997, when the Pakistani authorities realized Applicant no longer lived in Pakistan, they stopped the pension. (Response; Items 2, 4, 8, 9)

In 2009, Applicant had a counterintelligence (CI) interview as part of his security processing. He was asked if he was receiving assistance or cash from any foreign government, and answered that he was not. The interviewer then added his own note stating that Applicant's father "receives" Applicant's monthly \$56 pension, indicating that Applicant's father was receiving it in 2009. However, Applicant stated during the 2009 interview, in his Answer, and in his Response, that the Pakistani government authorities stopped the pension in 1997 after learning that Applicant moved to the United States. He stated he is no longer eligible for the military pension because he does not reside in Pakistan. (Response; Items 2, 8)

Applicant's mother is deceased. His father is 88 years old and in poor health. He owns a house and about two acres of land in Pakistan, valued in total at about \$5,000. Applicant believes the property will be inherited by Applicant's brother. Applicant's father served in the British military when Britain controlled Pakistan. After the country gained its independence in 1947, his father served in the Pakistani military. Applicant estimated his father served a total of 16 years in these military forces. His father receives a military pension of about \$40 per month. He is the only member of the family who had an affiliation with a foreign military or government. At his 2009 CI interview, Applicant estimated he talked with his father five to six times per year; at his 2011 interview, he said they talked two to four times per year. In his 2013 Response, he said "For the last 4 years I have barely talked with him" and have only discussed his health. Applicant has been sending his father money since about 2000. He sends about \$200 via bank transfer once every four to six months. Applicant also provides money to his son, to give to his father, when his son travels to Pakistan to visit family. In his 2013 Response, Applicant said he sends not more than \$500 per year. He went to Pakistan in 2010 to visit his ailing father. (Response; Items 2, 6-11)

Applicant's brother and sister are citizens and residents of Pakistan. His brother is a mechanic. In 2009, Applicant said he talked to his brother four to five times per year. In 2011, he said he talked with his brother two to three times per year. Applicant's sister is a housewife. In both 2009 and 2011, Applicant stated he had not talked with her in seven to eight years. In his 2013 Response, Applicant stated he has not been in contact with his brother or sister in 15 years. Applicant also has a brother-in-law who is a farmer, and a sister-in-law who is a homemaker. Both are citizen-residents of Pakistan. In 2009, he estimated he talked with them two to five times per month, but in 2011 he stated he talked with them only one to five times per year. Since he started working in a combat zone in 2011, he talks with them about twice per year. They are not aware that he works as a linguist. (Response; Items 2, 6, 10)

When Applicant lived in Pakistan, he opened a bank account in 1993. He was instructed to open it by the Pakistani government so his military retirement funds could be deposited. He last used it in 1995, before he moved to the United States, and the balance was approximately \$60. In 2010, when he went to Pakistan to see his father, he checked the account and was told it was "declared dead" because there had been no activity for the past 15 years. (Response; Items 2, 4, 8, 9)

Applicant purchased his first home in the United States in 1999. When he completed his 2011 personal financial statement, his house was worth approximately \$147,000. His other assets--a car, a certificate of deposit, and a 401k account—are worth \$37,000. His U.S. assets in 2011 totaled \$184,000. (Response; Item 12)

The Islamist Republic of Pakistan (Pakistan)

Pakistan, a parliamentary federal republic in South Asia, gained independence from Britain in 1947. It has a population of more than 170 million. It held successful elections in February 2008 and has a coalition government. However, many parts of the country are affected by militancy and violent extremism.

Terrorist networks operate within Pakistan. Members of the Taliban are known to be in the FATA region, in Balochistan Province, which borders Iran and Afghanistan, and in the Khyber Pakhtunkhwa in the FATA region. The FATA region is a sanctuary to al-Qaida and other extremist groups. The Haqqani Network also operates with impunity in Pakistan. On September 7, 2012, the United States formally declared the Haqqani Network a foreign terrorist organization.

The U.S. Department of State (DOS) defines terrorist safe havens as "ungoverned, under-governed, or ill-governed physical areas where terrorists are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security because of inadequate governance capacity, political will, or both."² The DOS concludes that, despite efforts by Pakistani security forces, groups including Afghan and Pakistani militants, foreign insurgents, and al-Qaida terrorists have safe haven in

² U.S. Department of State, Country Reports on Terrorism 2012, Chapter 5, Terrorist Safe Havens.

Pakistan, and train and operate there to plan attacks against the United States and its allies in Afghanistan. Taliban senior leaders also enjoy safe haven in Pakistan.

The Pakistani government has a poor human rights record. Reported violations include extrajudicial killings, torture and disappearances by security forces, lack of judicial independence, arbitrary arrest, honor crimes, wide-spread corruption, disappearance and imprisonment of political opponents, and trafficking in persons. The *Human Rights Report* on Pakistan issued by the U.S. DOS in April 2013 notes reports that Pakistani domestic intelligence services monitored political activists, politicians, suspected terrorists, and the media. The DOS warns U.S. citizens to defer non-essential travel to Pakistan in light of the presence of terrorists who have attacked civilian and foreign targets. Credible reports indicate that authorities routinely used wiretaps, and intercepted and opened mail without requisite court approval.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B (foreign influence) and C (foreign preference).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the

³ Directive ¶ 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁶

Analysis

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern under Guideline C:

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.

Under AG ¶ 10, the following disqualifying condition is relevant:

(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. . . :

(2) military service. . . for a foreign country;

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

While living in Pakistan, Applicant served 18 years in its military forces. Based on his Pakistani citizenship and his military service, he received a military lump-sum retirement payment, and a monthly military pension, when he retired in 1994. He received the military pension for about one year. He then used the lump-sum payment to finance the costs when he and his family moved to the United States in 1995. He contributed to his father’s support by allowing him to continue to collect Applicant’s pension. AG ¶¶ 10(a)(2) and 10(a)(3) are relevant.

AG ¶ 11 lists conditions that can mitigate foreign preference concerns. I have considered all of the mitigating conditions, especially the following:

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor.

Applicant’s military service occurred from 1976 to 1994. He received military retirement and pension benefits between 1994 and 1997. Applicant became a

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

naturalized U.S. citizen in 2005, and the above events occurred previously, in the 1970s through 1990s. Although the CI interview appears to state Applicant was receiving the pension in 2009, this was a statement not by the Applicant but by the interviewer. Applicant has consistently maintained that his pension ended in 1997. I find it credible that the Pakistani authorities determined he was no longer eligible for his pension once he had moved to the United States. I find Applicant's explanation credible that the pension ended in 1997, before he became a U.S. citizen, and he was not receiving the military pension in 2009. Mitigating condition AG ¶ 11(c) applies.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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 describes conditions that could raise a security concern and may be disqualifying. I have considered all the disqualifying conditions, and find that the following are relevant:

- (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;
- (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; and
- (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.

The mere possession of close family ties with a resident or citizen of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has ties with that relative, this factor

alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁷

Moreover, the country in question must be considered. In particular, the nature of its 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.⁸ Several terrorist networks operate within Pakistan, including the Taliban and al-Qaida. Terrorists have safe haven in Pakistan, where they train and plan attacks against the United States and its allies in Afghanistan. The threat of terrorism remains high. Further, Pakistan has a poor human rights record, including widespread corruption, torture by security forces, and disappearances and imprisonment of political opponents. The DOS notes credible reports that Pakistani authorities routinely used wiretaps, and intercepted and opened mail. American citizens with family members who are citizens or residents of Pakistan are at heightened risk of coercion, exploitation, or pressure.

Applicant has immediate family members who are citizens and residents of Pakistan, including his father, brother, and sister, his sister-in-law, and his brother-in-law. Applicant is close with his father, has provided him with financial support since the mid-1990s when he allowed his father to use his own pension for support, and continues to contribute to his support by sending him up to \$500 per year. Applicant's father had ties to a foreign military in the past through his years of service in the Pakistani military in the 1940s and 1950s. Based on his 2013 Response, Applicant's contacts with his father have decreased since 2011.

In his 2009 interview, Applicant said he was in contact with his brother four to five times per year; in 2011, he said it was two or three times per year. However, in 2013 Applicant provided conflicting information because he said he had not talked with his brother in 15 years. He has not had contact with his sister in many years. His contact with his in-laws also decreased from as frequently as five times per month to as little as once per year. Since he began working in a combat zone in 2011, he is in touch with them about twice per year.

The Appeal Board has held that there is a rebuttable presumption that an applicant has ties of affection with immediate family members and with in-laws.⁹ Applicant's relationships with his family members in Pakistan create a heightened risk of exploitation or coercion. Moreover, Applicant's ties of affection to his foreign family create a potential conflict of interest between his desire to protect them, if they were threatened or coerced by terrorists or extremists, and the obligation he would have to

⁷ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

⁸ ISCR Case No. 07-02485 at 4 (App. Bd. May 9, 2008).

⁹ ISCR Case No. 00-0484 at 4 (App. Bd. Feb. 1, 2002); ISCR Case No. 01-03120 at 3 (App. Bd. Feb. 20, 2002).

protect classified information, were he to hold a security clearance. AG ¶ 7(a) and (b) apply.

Applicant had a bank account in Pakistan for deposit of his military pension while he lived there. After he moved to the United States, Applicant no longer used the foreign bank account. However, he learned on his last trip to Pakistan that the bank had closed the account because of inactivity. Moreover, Applicant's U.S. assets of approximately \$184,000 far outweigh the *de minimus* amount that remained in the bank account before it was closed. Applicant's bank account does not represent a substantial foreign financial interest. AG ¶ 7(e) does not apply.

I have considered the mitigating conditions under Guideline B (AG ¶ 8), especially the following:

(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 is bound by ties of affection and obligation to his father, who lives in a country where terrorists and extremists operate and target U.S. interests. He is also in touch with his siblings and in-laws. Applicant's foreign relatives could be subject to coercion. Given his ties to immediate family in Pakistan, he could be placed in a position that could force him to choose between their interests and those of the United States. AG ¶ 8(a) cannot be applied.

In evaluating mitigation under AG ¶ 8(b), I considered Applicant's ties to the United States. He has lived in the United States for 18 years. His wife and children are U.S. citizens. In addition, I considered his current employment. Applicant has provided a valuable service to the United States, and has worked for the past two years in a combat zone assisting U.S. forces. His colleagues provided letters extolling his contributions. I also considered Applicant's contacts with his family in Pakistan, including his father, who had ties to the Pakistani military. Applicant's actions show that he has ties to his father: he checks on his father's health, visited him in Pakistan when

he was ill, and provides him with financial support. Applicant was in touch with his brother, although the extent of their more recent contact is unclear from the record. Applicant is also in touch with his in-laws. Applicant receives partial mitigation under AG ¶ 8(b).

Mitigation under AG ¶ 8(c) is not available. Applicant's contacts with his foreign family are ongoing. The exact number of times Applicant is in touch with his family members appears to have varied over the past several years, which may stem from his change in residence from the United States to the combat zone. However, his continuing financial support to his father over many years demonstrates his ties of affection and obligation. There is a rebuttable presumption that relationships with immediate family members, and with relatives of a spouse, are close. Applicant has not rebutted that presumption. Security concerns under Guideline B are not mitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

In evaluating the whole-person factors, I considered the factors in Applicant's favor: He has been a U.S. citizen for eight years; his wife and children are U.S. citizens; and he has been working for the U.S. government since 2009. In addition, the Guideline C foreign preference concerns are mitigated.

As Applicant requested a decision based on the written record; his demeanor and credibility cannot be assessed as they could be in a hearing. From the record, however, it is evident that Applicant provides a valuable service to the United States through his position as a linguist. Based on his certificates of achievement and positive recommendations, he performs his job in a professional and commendable manner. However, Applicant has ties to immediate family members—his father, brother, sister, brother-in-law and sister-in-law—who are citizens and residents of Pakistan. Applicant keeps in touch with his foreign family members. His father had foreign government ties through his years in the Pakistani military. Applicant's ties of obligation and affection to his father are evident. These facts, along with the prevalence of terrorists and

extremists who target U.S. interests, represent a heightened security risk that has not been mitigated. Although Applicant has demonstrated dedication to the United States through his employment, his ties to family members who live in a country with active terrorist networks place him in a position where he could be subject to coercion.

A fair and commonsense assessment of the record evidence shows Applicant has not satisfied the doubts concerning his suitability for a security clearance.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline C:	FOR Applicant
Subparagraphs 1.a – 1.c	For Applicant
Paragraph 2, Guideline B:	AGAINST Applicant
Subparagraphs 2.a – 2.e	Against Applicant
Subparagraph 2.f	For Applicant

Conclusion

In light of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge