



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



In the matter of:)
)
) ISCR Case No. 13-00435
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

01/03/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, 43, was born in Pakistan and became a naturalized U.S. citizen in 2009. He has close ties of affection and obligation toward his parents, siblings, extended family members, and friends who are citizens and residents of Pakistan. He failed to demonstrate that his contacts in Pakistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States (U.S.) and his connections to family members. Moreover, he falsified his 2011 security clearance application. He failed to mitigate the foreign influence and personal conduct security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 18, 2011. On June 3, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence) and

Guideline E (personal conduct).¹ Applicant answered the SOR on July 9, 2013, and elected to have his case decided on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM) was provided to him by transmittal letter dated September 18, 2013. Applicant received the FORM on October 27, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He timely responded to the FORM on November 1, 2013, and provided a statement, dated October 30, 2013, two reference letters, and a certificate of appreciation that were made part of the record. The case was assigned to me on November 27, 2013.

Procedural Issue

Department Counsel requested I take administrative notice of certain facts concerning Pakistan. He provided source documents (all official U.S. Government publications) to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. He denied the allegations under SOR ¶¶ 1.c, and 2.a through 2.c. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, including his answers to the SOR, the FORM, and a 2011 Counterintelligence-focus Security Screening Questionnaire, I make the following findings of fact.

Applicant is a 43-year-old linguist working for a government contractor in support of deployed U.S. military forces. Applicant, his parents, siblings, and extended family members were born in Pakistan. He was raised and educated in Pakistan. He attended college in Pakistan, where he received a bachelor's degree in political science and sociology.

In December 1993, Applicant entered the U.S. via a six-month tourist visa. After the expiration of his visa, he remained illegally in the U.S. from June 1994 until February 1997, when he married a U.S. citizen. He divorced his first wife in September 1997. He married another U.S. citizen in April 1998, and divorced her in September 2006. He does not have any children. He became a naturalized U.S. citizen in September 2009. He visited two Pakistani consulates in the U.S. in 2001 and 2007 to renew his Pakistani passport, which expired in 2012. In 2011, Applicant expressed his intent to surrender his Pakistani passport, but he provided no other evidence to that effect.

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant travelled to Pakistan three times to visit his family, friends, and for personal vacations from April 2007 to May 2007; from May 2008 to October 2008; and from January 2010 to May 2010. (2011 SCA, Section 20C; See Applicant's Pakistani and U.S. passports at Item 5) He has strong ties of affection and obligation toward his parents, siblings, and other family members and friends living in Pakistan. Although he claimed not having many friends in Pakistan, in his October 2011 statement to an investigator, he disclosed at least three childhood friends living in Pakistan.

Applicant is very proud and thankful toward his parents about the way he and his siblings were raised and educated. He maintains frequent contact with his parents, and with some of his siblings, extended family members, and friends living in Pakistan. He does not send money to his parents on a consistent basis, but he remembered giving them \$2,500 and \$1,500 while he was vacationing in Pakistan. When he travels to Pakistan, he stays with his family for the maximum amount of time allowed by his plane ticket. (Answer to the FORM)

Applicant is concerned about the safety of his family in Pakistan if people in Pakistan were to find out about his work for a U.S. government contractor. He stated: "I did not and will not tell anybody that (sic) where I work because that will put my family in a gravely (sic) danger." (Answer to the SOR) He does not talk to his brother-in-law because they "do not share the same thoughts." Applicant did not explain how or why they do not share the same thoughts. (Answer to the SOR) One of his brothers-in-law works for the Pakistani government at a hospital.

Section 20A (Foreign Activities) of Applicant's 2011 SCA, asked him to disclose whether in the last seven years he had any foreign financial interests including owning real estate, personal property, or investments in a foreign country. Applicant answered "no" to all the above questions.

In his answer to the SOR, Applicant explained that his father owns two properties in Pakistan. The first property was inherited from Applicant's grandfather. Applicant's father purchased the second property when Applicant was a child, and developed it on his own. Applicant claimed he did not know the value of the properties, and that he has no control over them. Applicant admitted that in 2004 he purchased a track of land in Pakistan for \$4,000 or \$5,000 for a commercial rental store. He claimed he never rented his property because the place is very dangerous. (Answer to the SOR) In his answer to the FORM, he stated that the land he purchased in 2004 turned out to be a scam.

Section 13A (Employment Activities) of his 2011 SCA, asked Applicant to disclose his employment activities during the preceding seven years. He disclosed the following periods of employment:

From October 2001 through March 2004 he worked full-time as a merchant at a flea market.

From March 2004 through February 2006 he worked full-time as a clerk at gas station A.

From July 2004 through May 2006 he worked as a cashier at gas station B.

From February 2006 through May 2009 he worked full-time as a cashier at a convenience store.

From May 2009 through June 2010 he worked full-time as a cashier at a grocery store (W).

From June 2010 through October 2011 he worked full-time as a cashier at a supermarket (B).

From October 2011 to present he has worked for a government contractor as a linguist in support of deployed U.S. personnel.

SOR ¶ 2.a alleges that Applicant falsified his 2011 SCA because he stated in his answers to Section 13A (Employment Activities) that he worked full-time at a grocery store in the U.S. from May 2009 to June 2010, when in fact he was living with his parents in Pakistan from January 2010 to May 2010. Applicant explained in his answer to the FORM that the dates in his job history were to the best of his knowledge, and if the dates he provided were not aligned, it was just an oversight.

Section 13C (Employment Record) of Applicant's 2011 SCA, asked him to disclose whether in the last seven years he was fired from a job; quit a job after being told he was fired; left a job by mutual agreement following allegations of misconduct or unsatisfactory performance; left a job under unfavorable circumstances; or was laid off. Applicant answered "no" to all the above questions.

SOR ¶ 2.b alleges that Applicant falsified his 2011 SCA because he failed to disclose that he had been fired from jobs in 2010 and 2011. Concerning his firing from store W in 2010, Applicant claimed that the owner gave him one week off. Applicant called the owner a week later to ask him whether he could return to work, and he was told to wait for a while. Sometime later, the owner called and told Applicant that he had given his position to a nephew, and that Applicant needed to get another job. Considering that Applicant was living in Pakistan from January 2010 to May 2010, his explanation is inconsistent with the facts. Notwithstanding, the evidence does not establish that he was fired.

Concerning his firing from store B in 2011, Applicant explained that when he found out about the linguist job with a government contractor, he asked for two weeks' vacation. Later, when Applicant got the job offer, he informed the store owner that he was not returning to work. The owner became very angry because he had wasted his time working Applicant's shift for two weeks.

During his October 2011 interview, Applicant stated he was not sure whether he was still employed at store B, because when he left for his vacation, he was told there was no guarantee his position would be available when he returned. (Item 5, October 2011 Counterintelligence-focused Security Screening Questionnaire.) The FORM evidence does not establish that he was fired.

Applicant noted he has worked shoulder-to-shoulder with U.S. Armed Forces since 2011. He stated that he has placed his life at risk for his country, many times under gunfire. He believes that if that does not show he is trustworthy, then nothing will prove it. He is proud to serve his country, and will be honored to serve his country in the future. He believes he is a great asset to our country in its war on terror because he can speak four languages.

Applicant explained that he does not have any financial ties to the U.S. because he never had the money to buy a home or invest. With the money he is currently making working for a government contractor, he plans to purchase a fast food business franchise and start his own business. He also plans to build his own home. Applicant would be proud to tell his family about what he does for a living, but his operational security training tells him differently. He serves his country to the best of his ability. His wish is to eradicate terror from the world, and hopes he will be given the opportunity to keep on proving it.

Applicant presented a letter of commendation, a certificate of appreciation, and a letter of release from duty lauding his exemplary service and outstanding support as a linguist for U.S. personnel. He played a critical role in the mission success of his unit. He is considered to have a strong work ethic and a positive attitude. He acted professionally and is considered to be a highly capable interpreter.

I take administrative notice of the following facts concerning the government of the Islamic Republic of Pakistan. The U.S. and Pakistan have had diplomatic relations since Pakistan obtained its independence from Great Britain in 1947. The countries' interests have been in general agreement for much of that time. Since 2001, Pakistan has helped the U.S. in its global war on terrorism and has helped capture hundreds of Taliban and al-Qaeda personnel. In 2011, the leader of al-Qaida, Osama bin Laden, was killed by U.S. forces in Pakistan, where he resided. Between 2009 and July 2013, the U.S. disbursed over \$3.55 billion in civilian assistance to Pakistan, including over \$1 billion in humanitarian assistance.

Pakistan's efforts to control terrorist safe haven areas within their country have not been effective because of inadequate governance capacity or political will. Instability along large sectors of Pakistan's territory continue to provide terrorist organizations such as al-Qaida, the Haqqani Network, the Afghan Taliban, Lashkar e-Tayyiba, and other criminal organizations with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests. Terrorist attacks frequently occur against civilian, government, and foreign targets. Attacks have

included armed assaults on heavily guarded sites, including Pakistani military installations. Pakistan did not directly target the Afghan Taliban or the Haqqani Network.

Pakistani government and military entities have committed numerous human rights violations in the name of counter-terror operations and investigations. Extra-judicial killings, arbitrary arrests without access to due process, and other major human rights problems are commonplace.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The Government's concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

- (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 or foreign influence or exploitation.

The mere possession of close family ties with a person in 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 contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and the compromise of classified information.² Applicant has frequent contacts and a close relationship of affection and/or obligation with his parents, siblings, cousins, and childhood friends who are residents and citizens of Pakistan. The extent of his close relationships is demonstrated by his

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

frequent contacts, his providing financial support for his parents, and his travel and prolonged visits with his family and friends in Pakistan. Additionally, Applicant purchased a tract of land in Pakistan in 2004.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Pakistani agents, criminals, or terrorists operating in Pakistan may exploit his relationships to obtain information about the United States. With its negative human rights record, its government's inadequate governance capacity or political will, and the numerous terror organizations that operate within Pakistan, it is likely that Applicant's family members could be vulnerable to coercion.

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the Government is never required to disprove a mitigating condition.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions do not apply. Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's relatives and friends are residents and citizens of Pakistan. He has visited his relatives and friends in Pakistan during extended periods of time. He has frequent contacts with his parents, some of his siblings, and at least three childhood friends. He has provided his parents with financial assistance.

Applicant travelled to Pakistan to visit his relatives, friends, and for personal vacations in 2007 (30 days), 2008 (134 days), and 2010 (115 days). Applicant is concerned that, if members of the community became aware of his current occupation, his relatives and friends would be in grave danger. However, he continues to have frequent contact with his relatives and friends, provides his parents with financial assistance, and owns a tract of land in Pakistan.

In deciding whether Applicant's family members are in a position to be exploited, I considered Pakistan's form of government. The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the U.S.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

The relationship of Pakistan with the U.S. places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives and friends living in Pakistan do not pose a security risk. There is no evidence that intelligence operatives, terrorists, or criminals from Pakistan seek or have sought classified or economic information from or through Applicant, his parents, or other relatives and friends living in Pakistan. However, we cannot rule out such a possibility in the future. There is evidence of numerous terrorist organizations actively operating within Pakistan's borders. They have conducted attacks against American forces, the Pakistani government, and citizens of that country. It is possible that terrorists would attempt to coerce Applicant through his relatives living in Pakistan. This places a heavy burden of persuasion on Applicant to demonstrate that his contacts in Pakistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

Applicant's relationship with the U.S. must be weighed against the potential conflict of interest created by his relationship with his family members living in Pakistan. Applicant left Pakistan in 1993, at age 23. He immigrated to the U.S. under a visitor's visa. After the expiration of his visa, he remained illegally in the U.S. until he married a U.S. citizen in 1997. He became a naturalized U.S. citizen in 2009.

Applicant has made the United States his home since 1993, and has been a productive U.S. citizen. He disclosed no other relatives living in the U.S. Additionally, the available evidence does not establish that Applicant has any financial and property interests in the United States, except for his current job and owning a car. On the other hand, he owns a tract of land in Pakistan.

Even considering Applicant's recent service to the United States as a linguist in a combat zone, the record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his relatives and friends in Pakistan.³

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern, stating:

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

Applicant falsified material facts in his 2011 SCA when:

1. he stated he was employed in the U.S. from May 2009 to June 2010, when in fact he was living in Pakistan with his family from January 2010 to May 2010; and
2. he deliberately omitted that he purchased land in Pakistan in 2004 for \$4,000 or \$5,000, and owned it as of the time he answered the FORM.

Applicant's behavior triggers the applicability of the following disqualifying conditions under AG ¶ 16:

(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.

AG ¶ 17 provides seven conditions that could mitigate the personal conduct security concerns.

³ See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006).

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the Guideline E mitigating conditions apply. Applicant deliberately omitted relevant and material information from his 2011 SCA. His falsification is recent and potentially violates federal law (18 U.S.C. 1001). There is no evidence of efforts to correct his falsifications, that the behavior is unlikely to recur, or of steps taken to reduce his vulnerability to exploitation. Applicant's evidence is insufficient to mitigate the personal conduct security concerns.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines B and E in my whole-person analysis. Considering the evidence as a whole, Applicant's favorable evidence is insufficient to demonstrate that his contacts in Pakistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members and friends. Moreover, he

falsified his 2011 SCA. Applicant failed to mitigate the Guideline B and Guideline E security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.c:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge