



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



In the matter of:)
)
) ISCR Case No. 13-00507
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

01/22/2014

Decision

CURRY, Marc E., Administrative Judge:

Given Applicant’s deep and longstanding relationships in the United States, he can be expected to resolve in favor of the U.S. interest any potential conflict of interest that may arise based upon his family ties to Pakistan. Clearance is granted.

Statement of the Case

On August 9, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence, and F, financial considerations. 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).

Applicant answered the SOR on September 29, 2013, admitting all of the allegations and requesting a hearing. On October 29, 2013, I received the case

assignment. DOD issued a notice of hearing on November 8, 2013, scheduling it for January 5, 2013. I held the hearing as scheduled. During the hearing, I received 5 Government exhibits, marked as Government Exhibits (GE) 1 through 5, and 16 Applicant exhibits, marked as Applicant Exhibits (AE) A through P. Also, I received the testimony of Applicant and one character witness, and took administrative notice, at Department Counsel's request, of the adjudicative facts set forth in nine documents, marked as Hearing Exhibit (HE) I through IX. DOHA received the hearing transcript (Tr.) on December 13, 2013.

At the close of the hearing, I left the record open for Applicant to submit additional exhibits. He timely submitted five exhibits that I marked and received as AE Q through U. Also, after the hearing, I received two character references via e-mail. Department Counsel did not object to their admissibility. I printed and incorporated them into the record as AE V and AE W.

Preliminary Ruling

Department Counsel and Applicant stipulated that the Guideline F security concerns, as set forth in Paragraph 2, had been mitigated. Consequently, I resolve Paragraph 2 in Applicant's favor.

Findings of Fact

Applicant is a 62-year-old married man with four sons and one daughter, all of whom are adults. Applicant has been married since 1977. He was born and raised in northwest Pakistan, approximately 40 miles from the Afghan border. (Tr. 59) He is a high school graduate, and has taken two years of college courses. He immigrated to the United States in 1999, and became a naturalized U.S. citizen in 2010. (Tr. 57)

Applicant speaks three languages native to the region where he was raised. (Tr. 70) His request for clearance is being sponsored by a company that provides linguist services for the Department of Defense. (Tr. 16)

Applicant's wife is a naturalized U.S. citizen. She lives with him and works as a nanny. (Tr. 82) Applicant's daughter and three of Applicant's sons are U.S. citizens and residents. His other son is a citizen and resident of Pakistan. He and his wife are attending a seminary school there. (Answer at 1) Applicant speaks with this son approximately once per month. (Tr. 60) He sends him money each month, and he is sponsoring his application for a visa to immigrate to the United States. (Tr. 78, 80)

Applicant's son-in-law is a Pakistani citizen who lives in Applicant's home with Applicant's daughter. He is in the process of becoming a naturalized U.S. citizen. (Tr. 58)

Applicant's parents are deceased. His brother is a citizen and resident of Pakistan. His occupation is unknown from the record. Applicant has not talked with him

in two years. (Tr. 60) Applicant's sister is a citizen and resident of Pakistan. She is a retired nurse. Applicant has spoken to her twice in the past year. (Tr. 62)

Applicant's mother-in-law is a citizen and resident of Pakistan. (Tr. 63) Applicant's wife speaks with her regularly, but Applicant typically does not speak with her. Applicant's wife has two brothers and a sister who are citizens and residents of Pakistan. One brother-in-law is a retired nurse. Applicant has talked to him twice during the past year. (Tr. 62) Applicant's other brother-in-law is a street cleaner. He has not talked to him in several years. (Tr. 64) Applicant's sister-in-law teaches in a primary school. Applicant has not talked with her in several years. (Tr. 64-65)

Applicant has visited Pakistan twice since immigrating to the United States. (Tr. 81) The first trip was in 2010. Most recently, he visited in 2013. He stayed for two to three weeks during each visit. He did not see his brother on his last visit. (Tr. 60)

During Applicant's early childhood, he lived in dire poverty. As a Christian in an Islamist country, his family was treated like second-class citizens. When Applicant was in third or fourth grade, a U.S. Air Force officer from a local base befriended his family. He helped them financially, both personally, and through a Christian charity group. (Tr. 89) As a result of this assistance, Applicant and his siblings were able to receive an education. (Tr. 66) Since then, Applicant has profoundly admired the United States.

In 1986, Applicant began working for a contractor with a U.S. aid organization that had an office in his home town. (Tr. 67) He began as a driver. In 1988, he was promoted to a warehouseman. (AE U at 2) Later, he was promoted to a supply assistant. (AE B) Applicant was highly regarded on the job. Applicant's supervisor characterized him as a person "with a myriad of skills who willingly step[ped] in wherever [he was] needed." (AE B)

In 1991, the beginning of the Gulf War prompted a wave of anti-American extremism in the Muslim world. (AE A) Consequently, the U.S. aid organization where Applicant worked evacuated all of its employees except critical management personnel. Applicant was tasked with securing fuel and other commodities, and hiding them in locations where the remaining Americans could have prompt access to them in the event of an emergency. (AE A) He performed these tasks in a "prompt, tireless, and efficient" manner. (AE A)

In 1994, the United States closed the aid office where Applicant worked. This angered the local community because the office employed many local Pakistani citizens. One day after the Americans left, a mob approached the office with the intent of tearing the U.S. flag from the wall and burning it. Before the mob could arrive, Applicant removed the flag, smuggled it out of the building, and hid it in his home. (Tr. 68, 86-87)

Since immigrating to the United States, Applicant has actively lobbied his local Congressman for legislation to prohibit flag desecration. (AE E) He has involved himself with other political issues, frequently writing Congressmen. (AE D-G) On one occasion,

he wrote an editorial in a local newspaper. (AE K at 2-3) He has frequently hosted local politicians in his home. (Tr. 96)

Applicant is also actively involved in charities. He volunteers at a food bank, and feeds homeless people during holidays. (Tr. 92-93)

Applicant is highly respected in the community. According to his pastor, “com[ing] from a nation that lacked freedom and the democratic process ha[s] given [Applicant] an advantage over those of us who have only known ‘the home of the free and the land of the brave.’” (AE R) Through church, Applicant is friends with the deputy director of a U.S. intelligence agency. According to this deputy director, Applicant is a man of “upstanding character - profoundly grateful and loyal to the U.S., a man of his word, and committed to service in whatever he does.” (AE V)

Applicant is a homeowner. He has owned his home for eight years. (Tr. 83)

Administrative Notice

Pakistan is a parliamentary federal republic. (HE VIII at 1) Pakistan is battling several terrorist groups throughout Pakistan, particularly in its northwest province near Afghanistan where groups such as Al-Qa’ida and the Taliban are present. (HE III at 2-3; HE VIII at 3) Also, the United States is working with Pakistani scientists and engineers with expertise in weapons of mass destruction (WMD) or WMD-applicable expertise to develop surveillance capabilities to detect and identify possibly catastrophic biological and chemical events. (HE I at 3) However, parts of Pakistan remain terrorist safe havens. This problem is particularly acute in Pakistan’s northwest province bordering Afghanistan. (HE I at 1) Most important, the question of whether elements of the Pakistani government were sheltering Osama bin Laden remains unresolved. (HE VIII at 2)

Pakistan is a developing country. The military continues to have a pervasive influence on the government, and Pakistan’s human rights record remains poor. (IX at 13-14) Police often failed to protect members of religious minorities from attacks. (HE IX at 13)

Policies

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.”

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

Pakistan has a paradoxical relationship with the United States. The government is allied with the United States in the fight against terrorism, working to prevent the spread of WMD, and aggressively fighting terrorists in its northwestern province. Conversely, terrorists and other insurgents fighting against the U.S. coalition in Afghanistan receive aid and comfort from local Pakistani communities near the Afghan border.

Although Pakistan has a mixed record against fighting terrorism and a sometimes shaky alliance with the United States, there is no record evidence that it is a global competitor seeking to project its power worldwide through the intimidation or coercion of its citizens living abroad. Consequently, Applicant’s son-in-law, with whom he shares living quarters, does not trigger the application of AG ¶ 7(d), “sharing living quarters with a person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.” I resolve SOR subparagraph 1(e) in Applicant’s favor.

Applicant’s relatives who are both Pakistani citizens and residents trigger the application of AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that

contact creates a risk of foreign exploitation, inducement, manipulation, or coercion.” Applicant has not talked with either his brother or sister in more than a year. Applicant has talked to none of his siblings-in-law more than twice in the past year. AG ¶ 8(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,” applies.

Applicant talks to his son approximately once per month and sends him money. AG ¶ 8(c) is not applicable to this relationship. Although Applicant does not talk to his mother-in-law, there is a presumption that relationships with one’s parents-in-law are not casual. AG ¶ 8(c) does not apply to this relationship.

Applicant has only returned to visit Pakistan twice in the past 15 years since immigrating to the United States. He is a homeowner who is well-respected in his community and is actively involved in civic affairs.

Most important, before immigrating to the United States, Applicant twice worked to advance the interests of the United States under dangerous conditions. The first time, he was working for a U.S. agency to secure fuel and other commodities for embattled U.S. staff that remained after an evacuation during a particularly volatile period when anti-U.S. tensions were high in Pakistan. The second time, Applicant secured the U.S. flag and hid it in his home before a marauding mob could take it and destroy it. This was particularly significant because Applicant, a man who was particularly vulnerable to persecution as a Christian living in an Islamist country with a history of persecuting Christians, voluntarily placed himself in harm’s way to protect a venerable symbol of U.S. values – the values he had grown to admire as a child after a U.S. service member befriended his family and helped them rise out of abject poverty. Under these circumstances, Applicant has no conflict of interest, because he “has such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.”¹ Applicant has mitigated the foreign influence security concerns.

Whole-Person Concept

Under 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.

¹AG ¶ 8(b).

I discussed Applicant's favorable whole-person attributes in the Foreign Influence section of the Decision in reaching the conclusion that AG ¶ 8(b) applies.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge