



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



In the matter of:)
)
) ISCR Case No. 13-00561
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On September 17, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline E, personal conduct. 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 November 22, 2013, and elected to have her case decided on the written record. Department Counsel submitted the Government's

File of Relevant Material (FORM) on February 27, 2014. The FORM was mailed to Applicant and she received it on March 28, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted one document, Applicant Exhibit (AE) A, which was admitted into the record without objection. The case was assigned to me on April 30, 2014.

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, she admitted all the allegations, and provided explanations concerning the personal conduct 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 41 years old. She was born in Afghanistan in 1972. Her mother took her and two brothers to Pakistan in 1989 after the Soviet invasion of Afghanistan, where they were registered as refugees. She remained in Pakistan while her parents and some siblings immigrated to the United States in 2001. She married in 2000 and she and her husband came to the United States as refugees in 2001. She became a naturalized citizen of the United States in 2010. She worked as a linguist for a defense contractor from December 2011 to September 2013. She has taken some college courses. She has never held a security clearance.⁴

Applicant's brother (B1) was born in Afghanistan in 1982. He is a citizen of Afghanistan and currently resides in Pakistan. He left Afghanistan with Applicant and

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 Items 4-6.

their mother in 1989. He remained in Pakistan and became a dentist until he immigrated to the United States in February 2001. Later, he met and married a Pakistani-born resident of the United States. After he obtained his U.S. permanent resident card, he and his wife moved to Pakistan in 2007 so his wife could be closer to her family. He continues to work as a dentist in Pakistan. Applicant states she has not had contact with him since 2008.⁵

On December 13, 2011, Applicant completed her security clearance application (EQIP). In completing section 18, which asks for information about all relatives, living or deceased, she listed three brothers: B2, B3, and B1. She failed to list two deceased brothers (B4 and B5) and two living brothers (B6 and B7). All of her brothers except for B1 reside in the United States. On December 29, 2011, during an interview by a counter intelligence screener, she would not provide contact information for her brothers until the screener explained multiple times that it was a requirement. She also stated she intentionally did not list her living brothers on the application form because she is embarrassed by their actions and not close to them. She became estranged from her living brothers because she converted to a different religion when she married her husband, who is now deceased. She did not list her deceased brothers because their deaths were “very sad.”⁶

Applicant provided supporting letters from three service members who worked with her in deployed locations under combat conditions. She is described as “industrious, brave, selfless, and intelligent” by one officer. Another officer described her as, “one of our most skilled linguists.” A third officer, an Army colonel, stated she “exhibited decorum and professionalism required at a diplomatic level.” She also received two certificates of appreciation from the units she supported during her deployments.⁷

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 3-7.

⁶ Items 4-7.

⁷ Item 3.

The U.S. State Department 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 occur and governmental and police corruption is widespread. 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. 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’s brother, B1, is a citizen of Afghanistan and currently resides in Pakistan. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant attempted to rebut this presumption by stating that she has not had contact with B1 since 2008. Applicant’s relationship with her brother living in Pakistan is sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” It creates a concern about Applicant’s “obligation to protect sensitive information or technology” and her desire to help her relative in Pakistan. For example, if the Pakistan government or terrorists in Pakistan wanted to expose Applicant to coercion, it could exert pressure on her brother living there. Applicant would then be subject to indirect coercion through her relationship with her brother 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 her relationship with her relative living in Pakistan does not pose a security risk. Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and a desire to assist her relative 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."⁸ 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 her relative living in Pakistan, it is not possible to rule out such a possibility in the future. Although Applicant's communications with her brother have been limited, she continues to feel an obligation to him and affection for him. 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.

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

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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 her brother living in Pakistan. 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 her connections to her brother, Applicant is not able to fully meet her burden of showing there is little likelihood of a risk for foreign influence or exploitation.

Applicant's relationships in the United States must be weighed against the potential conflict of interest created by her relationships with her relative who lives in Pakistan. There is no evidence that terrorists, criminals, the Pakistan government, or those conducting espionage have approached or threatened Applicant or her brother in Pakistan to coerce Applicant or her brother 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 her family would be specifically selected as targets for improper coercion or exploitation. The evidence shows that Applicant has supported U.S. interests and performed dangerous duty as a translator assigned to military units in Afghanistan. Her military supervisors have commended her duty performance. This goes a long way to show deep loyalties toward the United States and indicates that she would resolve conflicts in favor of U.S. interests. AG ¶¶ 8(a) and 8(c) have limited applicability, but ¶ 8(b) fully applies. Applicant mitigated this security concern.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted to providing intentionally false information about her brothers. AG ¶ 8(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

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

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

Although Applicant eventually provided truthful information about her brothers' status, it was only after the investigator repeatedly questioned her about the subject. This does not constitute prompt, good-faith efforts to correct the falsification. AG ¶ 17(a) does not apply.

Intentionally failing to provide truthful and complete information on a security clearance application is never a minor offense. Her untruthful answers cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply.

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 toward approval of her clearance at this time. She faithfully supported the U.S. military efforts in Afghanistan through her translator duties; however, her admitted intentional lack of candor about her brothers' status when filling out her security clearance application is cause for concern. Therefore, she 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, although Applicant mitigated the security concerns arising under Guideline B, foreign influence, she failed to mitigate the concerns under Guideline E, personal conduct.

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a (1-3):	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