



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



In the matter of:)
)
-----) ISCR Case No. 13-00701
)
Applicant for Security Clearance)

Appearances

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

03/21/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns regarding foreign influence. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 1, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). 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) effective within the DOD on September 1, 2006.

In an answer dated November 25, 2013, Applicant admitted one of two allegations under Guideline C and both allegations under Guideline B. He also requested a decision without hearing. The Government prepared a File of Relevant Material (FORM), which included a request for administrative notice regarding Pakistan, on January 24, 2014. Applicant timely responded to the FORM with a two-page letter with seven attachments. The case was assigned to me on March 11,

2014 by the Defense Office of Hearings and Appeals (DOHA). After receiving the official case file, I reviewed its contents in its entirety. Noting no objections, I granted the Government's request for administrative notice on certain facts regarding Pakistan.

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the nation of Pakistan. It was accepted into the record as part of the FORM. Administrative or official notice is the appropriate type of notice used for administrative proceedings. 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)). Various facts pertaining to Pakistan were derived from the offered request and its attachments; other facts are derived from similar Government publications introduced in other DOHA cases and commonly known.

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. 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." (Administrative Notice, Attachment I) 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 Pakistan. There, they train and 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 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.

Findings of Fact

Applicant is a 42-year-old man working in the defense sector. Born and raised in Pakistan, he completed a bachelor's degree in the late 1990s. He never served in the Pakistani military. Applicant travelled to the United States in 2005 after obtaining United States permanent residency status. He qualified for that status through the sponsorship of a sister who initiated the process for him in 1996. In 2009, Applicant was issued a Pakistani passport that was marked to expire in January 2014. It replaced a 2004 Pakistani passport that expired in 2009. Later that year, he married. In the autumn of 2010, Applicant became a naturalized United States citizen and received a United States passport. On his U.S. passport, Applicant visited Pakistan later that year to arrange to have his wife join him in the United States. He never traveled on his Pakistani passport after becoming a U.S. citizen.

Applicant received the SOR in November 2013. When he understood that his Pakistani passport and dual citizenship could pose security concerns, he formally renounced his Pakistani citizenship in a written document. He did not do so earlier because he believed his oath of U.S. citizenship made him solely a U.S. citizen. He also turned over his Pakistani passport to a security officer. It has since expired. It is Applicant's intent to live in the United States, raise his family here, and be buried next to his father, who is interred in the United States. (Answer to the FORM) There is no evidence that Applicant has any notable connections to another country in terms of real estate holdings, investments, or savings. His only remaining nexus to Pakistan is in relation to his family members.

At issue in the SOR are several of Applicant's relatives. At SOR allegation 2.a, Applicant is noted as having "a sister who is a United States citizen and residents (sic) of Pakistan." At SOR allegation 2.b, it is written that he has three brothers-in-law and two sisters-in-law who are citizens and residents of Pakistan.

Applicant has four sisters. Two are residents and citizens of the United States. (Security Clearance Application, FORM, Item 4, pages 31-32 of 55, at entries #9-10) One is a citizen of the United States, but a resident of Pakistan. (Security Clearance Application, FORM, Item 4, page 30 of 55, at entry #8) One is a citizen of Pakistan, but a resident of the United States. (Security Clearance Application, FORM, Item 4, page 29 of 55, at entry #7) Although Applicant admitted the allegation at SOR 2.a, it remains unclear as to which sister is at issue because no sister is shown as being both a citizen and resident of Pakistan. The only sister clearly described in his Answer to the SOR is the spouse of the second brother-in-law described below. That sister lives in Pakistan when her husband is abroad on assignment, but comes to their home in the United States when her husband is on vacation. It is the couple's intent to permanently reside in the United States starting next year.

Regarding Applicant's brothers-in-law (BIL I), one has "filed for his United States citizenship since he has completed the requirement of the physical presence." (Answer to the FORM)

Another brother-in-law (BIL II) travels “back and forth between Pakistan and the United States” with his wife, Applicant’s sister. He is a doctor who knows that the U.S. market is very competitive among foreign medical practitioners and, therefore, is completing an additional medical program. Upon completion of that program, he “can stay permanently in the USA.” (Answer to the FORM) It is unclear, but it appears that this brother-in-law was in the United States when Applicant responded to the FORM. At that time, this brother-in-law was in the United States to apply for a green card. He is also awaiting the transfer of his medical records to the United States. It is unknown whether this in-law remained in the United States.

Applicant’s youngest brother-in-law (BIL III) is a doctor who has been issued an immigrant visa and is coming to the United States next year to qualify for a permanent resident card. He seeks to start his medical career in the United States. He is presently in Pakistan, where he is awaiting his medical credentials to be sent to the United States. As with Applicant’s other brothers-in-law, he has monthly contact with Applicant.

Although the SOR alleges at 2.b that Applicant has two sisters-in-law, only Applicant and one brother are married. There is no indication Applicant’s wife has any sisters. No sisters-in-law are noted in Applicant’s security clearance application (Security Clearance Application, FORM, Item 4). Only one sister-in-law is noted in Applicant’s list of foreign associates (FORM, Item 7#) She is approximately 38 years old, a housewife, and has a green card. She and Applicant’s brother recently bought a home in the United States. It is their intent to reside in that home permanently once Applicant’s brother completes his current linguistic assignment abroad.

Applicant is highly valued for his work. His unique talents and gifts have been an asset to his employer and its mission. He is proud to be a citizen of the United States.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 the applicant may deliberately or inadvertently fail to safeguard 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

Guideline C - Foreign Preference

AG ¶ 9 sets out the security concern relating to Foreign Preference:

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.

Applicant was issued a replacement Pakistani passport which expired in January 2014. Subparagraph 10(a)(1) is applicable:

. . . 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. This includes but is not limited to: (5) possession of a current foreign passport.

Here, Applicant was eligible for a Pakistani passport due to his parentage and birth in Pakistan. Consequently, he obtained a Pakistani passport while a citizen of that country. His parentage and place of birth were also the basis for his dual citizenship. He became a U.S. citizen in 2010. In 2013, he received the SOR. Recognizing that his Pakistani citizenship and Pakistani passport posed security concerns, he formally renounced his Pakistani citizenship and surrendered that passport to a security officer. His Pakistani passport, which was never used after he became a U.S. citizen, has since expired. In light of these facts, the following mitigating conditions from AG ¶ 11 apply:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country,

(b) the individual has expressed a willingness to renounce dual citizenship, and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

Applicant has various family members who are Pakistani citizens, residents, or both. These include two sisters and multiple in-laws. Therefore, I find that the following disqualifying conditions arise under 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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and

(b) connection 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.

In finding these conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Pakistan. They participate in nefarious activities. These facts are sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an applicant may be subject to coercion or undue influence when a third party pressures or threatens an applicant's family members. Under these facts, a third party coercion concern potentially exists in Pakistan. Therefore, the evidence provided is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationship 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., and

(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 interests in favor of the U.S. interests.

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate the allegations.

Here, the SOR's primary concerns are related to an unspecified sister and five in-laws of Applicant. The record fails to clearly specify which of these kin are at issue, so it cannot be discerned whether the individual facts about certain relatives have changed due to their personal circumstances or other considerations. Applicant discusses all of his sisters and their husbands. His descriptions, however, are brief and reveal little about the individuals. More than one of the individuals appears to be

in flux with regard to residence, citizenship, or both. Moreover, questions remain with regard to how close he is to these relations. Consequently, it is as difficult to examine Applicant's foreign family members and their activities as it is to weigh Applicant's closeness to his extended family against his ties to the United States. While there is no suggestion of disloyalty on the part of Applicant, more information is needed to make a measured assessment under Guideline B. Given these factors, I find Applicant's submissions are insufficient to raise any of the available mitigating conditions.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. I incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 42-year-old man working in the defense sector. He was born and raised in Pakistan, where he earned a bachelor's degree. He renewed his Pakistani passport in 2004 and immigrated to the United States in 2005. He became a United States citizen in 2010, and visited Pakistan on his United States passport later that year.

Foreign preference security concerns arising from issues related to Applicant's Pakistan-U.S. citizenship, his Pakistani passport, and a 2010 trip to Pakistan were readily dispelled by Applicant. He assumed his becoming a U.S. citizen invalidated his Pakistani citizenship. When advised that it could be a security issue, he executed a formal document explicitly renouncing his Pakistani citizenship. He also submitted to his security officer his Pakistani passport, which he never used once he became a U.S. citizen. That document has since expired. Foreign preference security concerns are mitigated.

Foreign influence security concerns arise from a sister, who allegedly is or was a citizen and resident of Pakistan, and three brothers-in-law and two sisters-in-law who are alleged to be citizens and residents of Pakistan. The basis for these allegations is unclear. It is equally unclear whether this is due to a change of circumstance amongst the family members in terms of their current immigration status and place of residence. Applicant admitted, however, that he has a sister who

is a Pakistani citizen and U.S. resident and another sister who is a U.S. citizen and a Pakistani resident. He also clarified that he has only one sister-in-law, the spouse of his one married brother. His descriptions of those individuals, as well as those of his brothers-in-law, are scant. Moreover, much of the newer information provided regarding these kin are predictions as to their future immigration status and intentions. Unrealized expectations are of little weight. Such factors confound assessment of these individuals under Guideline B.

When disqualifying conditions are raised, the burden is then placed on an applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant's answers to the SOR and FORM are highly limited and reveal little insight into his personal affinity for the kin at issue. Based on the limited information provided, I find that Applicant failed to meet his burden and that security concerns are unmitigated.

Formal Findings

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

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|---------------------------|-------------------|
| Paragraph 1, Guideline C: | FOR APPLICANT |
| Subparagraphs 1.a-1.b: | For Applicant |
| Paragraph 2, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 2.a-2.b: | 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge