



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



In the matter of:)
)
) ISCR Case No. 13-00698
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated foreign influence and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 10, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and E (personal conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on March 17, 2014, and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 2, 2014, scheduling the hearing for May 1, 2014. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on May 9, 2014.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated in this decision.

Evidence

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A through C, which were admitted without objection.

Findings of Fact

Applicant is a 56-year-old linguist sponsored for a security clearance by a defense contractor. He seeks to retain his security clearance, which he has held since about 2009. He has a bachelor's degree, and he has taken post-graduate classes without earning a post-graduate degree. He is married with three minor children.¹

Applicant was born in Pakistan to Pakistani parents. His parents are now deceased. His wife was also born in Pakistan. Applicant came to the United States in 1985. He married his wife in Pakistan in 1995. Applicant became a U.S. citizen in 1996. His wife is also a U.S. citizen. Their three children were born in the United States. The children received Islamic education online from an individual who is a citizen and resident of Pakistan.²

Applicant has three siblings who are citizens and residents of Pakistan. One of his siblings is a school teacher, the other two are farmers. Applicant does not get along with the two siblings who are farmers, and he has not had any contact with them since 2008. He communicates with the school teacher, but he has not seen that sibling since 2008. Applicant transferred an interest in inherited land to his wife in 1995. The estimated value of the land is \$5,000. The land is farmed by the two siblings that are estranged from Applicant. Applicant and his wife receive no value from the property.³

¹ Tr. at 18, 23, 53-58; GE 1-3, 5, 6.

² Tr. at 18, 21; Applicant's response to SOR; GE 1-3, 5, 6.

³ Tr. at 27-31, 36-37; Applicant's response to SOR; GE 1-3, 5, 6.

Applicant's father-in-law and mother-in-law are citizens and residents of Pakistan. They were both involved in education, but are now retired.⁴

Applicant's wife has two siblings who are citizens and residents of Pakistan. Applicant has cousins and friends who are Pakistani citizens and residents. One of his friends was killed in a terrorist attack. Applicant stated that he does not have any contact with his cousins, and he does not remember the last time he saw or talked to them. None of Applicant's family has any association with the Pakistani government.⁵

Applicant worked in Afghanistan as a linguist for a defense contractor in 2009 and 2010. He worked in Pakistan in 2010 through 2011. He met a Pakistani national at a social event. At some point, Applicant agreed to invest in a business venture operated by the Pakistani. Applicant opened a bank account in Pakistan. His wife wire transferred \$10,000 from the United States directly to the Pakistani national's bank account in June 2011. She wired another \$20,000 to Applicant's bank account in Pakistan. In July 2011, Applicant gave the Pakistani an additional 700,000 Pakistani Rupees, which equated to about \$7,500 in U.S. currency.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) on November 30, 2011. He listed the Pakistani national that he was in business with as a foreign contact. He did not report their business relationship, instead, he described the individual as a "friend." Question 20A asked about foreign financial interests within the time frame of the last seven years, and stated to "[i]nclude stocks, personal property, company shares, investments, or ownership of corporate entities," and to "[e]xclude U.S. based fund managers and accounts managed through your employer." Applicant listed his real estate in Pakistan under the appropriate question, but he answered "No" to the following questions:

1. Do you have or have you EVER had any foreign financial businesses, foreign bank accounts, or other foreign financial interests of which you have direct control or direct ownership?
2. Do you have or have you had any foreign financial interests that someone controls on your behalf?⁷

Applicant intentionally failed to divulge his interest in the Pakistani business and his Pakistani bank account, which contained about \$12,000 at the time.⁸

⁴ Tr. at 31-32; Applicant's response to SOR; GE 1-3, 5, 6.

⁵ Tr. at 23-27, 32-35; Applicant's response to SOR; GE 1-3, 5, 6; AE C.

⁶ Tr. at 26, 37-45; Applicant's response to SOR; GE 1, 3, 4.

⁷ GE 2.

⁸ Applicant's response to SOR; GE 3.

Applicant completed a Counterintelligence-Focused Security Screening Questionnaire on December 7, 2011. It appears that much of the questionnaire was completed by someone asking the relevant questions to Applicant and then filling in the answers for him. Applicant answered the following questions in the negative:

What assistance, gifts, money, or other items of value have you provided to non-U.S. persons, organizations, foundations, or governments, or any organizations whose focus is on issues or areas outside the U.S? How did you make the transfers?

Do you have any foreign bank accounts? If so, what is the purpose and balance of those accounts?⁹

Applicant intentionally failed to divulge his Pakistani business interest and bank account.¹⁰

Applicant was interviewed for his background investigation by an Office of Personnel Management (OPM) investigator on December 8, 2011. He was asked about his Pakistani "friend" that he listed on the SF 86. Applicant told the investigator that he and the individual were strictly friends. He stated that the individual owned his own business, but Applicant did not know the name of the business or what kind of business he operated. Applicant intentionally told the investigator false information about his relationship with his Pakistani business partner.¹¹

Applicant was interviewed again for his background investigation on October 4, 2012. Applicant was asked if he had ever wire transferred funds to anyone other than the individual who taught an online course to his children. He answered "no," and intentionally failed to divulge the wire transfer to his Pakistani business partner. The investigator then told Applicant that the investigation disclosed that funds were wire transferred from his bank account to a foreign country. Applicant stated that his wife wire transferred \$20,000 to her father, who shared the same name as Applicant. The investigator then asked about the business owned by his Pakistani partner. Applicant stated that the money was wired to the Pakistani, who then gave it to Applicant's father-in-law.¹²

Applicant called the OPM investigator on October 5, 2012, and told the investigator that he had to meet the investigator and tell him everything. They met later that same day. Applicant admitted the facts surrounding the wire transfers and his business venture with the Pakistani. He also admitted that he lied on his SF 86, during

⁹ GE 5.

¹⁰ The falsification of the Counterintelligence-Focused Security Screening Questionnaire was not alleged in the SOR. It will not be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in analyzing the "whole person."

¹¹ Applicant's response to SOR; GE 3.

¹² Applicant's response to SOR; GE 3.

his December 2011 interview, and during his interview on October 4, 2012. He apologized profusely for his fabrications.¹³

Applicant closed his foreign bank account, and he dissociated himself from his foreign business interest. He is deeply remorseful for lying to the DOD about his Pakistani business connections. He is unable to explain why he did it, other than to say that he made a mistake. He pleaded for another opportunity to prove that he can be trusted, and he promised that all future statements will be completely truthful. He listed all his foreign contacts and business connections on the SF 86 he submitted in April 2013.¹⁴

Applicant worked overseas under combat conditions. He submitted commendatory material and letters from U.S. military and civilian personnel, who praised his character, abilities, and service to the mission. One military officer wrote that Applicant's "advice and cultural understanding was indispensable and possibly single handedly saved the lives of the men and women assigned to [military unit] on many occasions." He further stated that in his 22 years of service, he "had not seen a more professional or qualified linguistic expert."¹⁵

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 to be 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, administrative judges apply the guidelines 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."

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

¹³ Tr. at 58-59; GE 3.

¹⁴ Tr. at 18-22, 45-47, 58-61; Applicant's response to SOR; GE 1, 3.

¹⁵ Tr. at 20, 50-52, 55-56; GE 3; AE A-C.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 B, Foreign Influence

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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;

(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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's siblings, in-laws, extended family members, and friends are citizens and residents of Pakistan. He owns property in Pakistan. Pakistan continues to have human rights problems, and it has been victimized by terrorist attacks. Applicant's foreign contacts and property interests create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) have been raised by the evidence.

SOR ¶¶ 1.b, 1.d, 1.e, and 1.g allege information that is already addressed under SOR ¶¶ 1.a, 1.c, and 1.f. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, SOR ¶¶ 1.b, 1.d, 1.e, and 1.g are concluded for Applicant.

There are no disqualifying conditions raised by Applicant's children receiving Islamic education online from an individual who is a citizen and resident of Pakistan. SOR ¶ 1.n is concluded for Applicant

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I considered the totality of Applicant's family ties to 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.¹⁶

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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 are vulnerable to government coercion. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in 1985. He became a U.S. citizen in 1996. His wife is a U.S. citizen, and his three children were born here. He is not close to his cousins and other non-family associates in Pakistan. The land that he gave to his wife in 1995 holds little value to him and his wife. He closed his foreign bank account, and he dissociated himself from his foreign business interest. AG ¶¶ 8(c) and 8(f) are applicable to those foreign contacts, which are alleged in SOR ¶¶ 1.i through 1.m.

¹⁶ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant worked overseas under dangerous conditions in support of the national defense. The Appeal Board has held that “an applicant’s proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case.”¹⁷ Notwithstanding, 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.” Applicant lied about his foreign contacts on multiple occasions. It is difficult to take any information provided about Applicant’s foreign contacts at face value. Because of Applicant’s close family ties to Pakistan, I am unable to find any of the mitigating conditions to be fully applicable to his remaining family members in Pakistan.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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. The following disqualifying conditions are 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; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant intentionally provided false information about his foreign financial interests on his November 2011 SF 86, during his December 2011 background interview, and during his October 2012 interview. AG ¶¶ 16(a) and 16(b) are applicable.

SOR ¶¶ 2.a and 2.b both allege that Applicant falsified the same question on the same SF 86. They are duplicative allegations. Accordingly, SOR ¶ 2.b is concluded for Applicant.

SOR ¶ 2.e alleges that Applicant entered into a business relationship with a Pakistani national without obtaining authorization or guidance from his employer or a

¹⁷ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

U.S. official. There was no evidence presented that Applicant was required to obtain authorization or guidance before entering the business relationship. There are no disqualifying conditions raised by that conduct. SOR ¶ 2.e is concluded for Applicant

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not correct his false SF 86 during his December 2011 Counterintelligence-Focused Security Screening Questionnaire, his December 2011 interview, or his October 2012 interview. Instead, he continued to lie about his business relationship with the Pakistani national. He receives credit in mitigation for calling the interviewer after his October 2012 interview and telling the interviewer that his statements were false. However, the mitigating conditions, individually or collectively, are insufficient to mitigate Applicant's multiple false statements. With unresolved doubts about Applicant's current reliability, trustworthiness, and judgment, I conclude that personal conduct security concerns remain despite the presence of some mitigation.

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):

- (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. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence, his work overseas, and the dangers involved in that work. However, he lied on multiple occasions about his foreign connections.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated foreign influence and personal conduct 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i-1.n:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraphs 2.c-2.d:	Against Applicant
Subparagraph 2.e:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge