



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



In the matter of: )  
)  
) ISCR Case No. 13-00772  
)  
Applicant for Security Clearance )

**Appearances**

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

02/06/2014

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

On February 25, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (Item 3). On September 10, 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). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 after September 1, 2006. The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered (Answer) the SOR on October 4, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on November 4, 2013. A complete copy of the File of Relevant Material (FORM), containing 14 Items

(Items 1-14), was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on November 12, 2013, and returned it to the Defense Office of Hearings and Appeals (DOHA). In response to the FORM, he timely submitted a document that I marked as Applicant Exhibit (AE) A, and admitted into the record without objection from Department Counsel. DOHA assigned the case to me on December 12, 2013.

### **Procedural Rulings**

Department Counsel requested administrative notice (AN) of facts concerning Pakistan. (FORM). He provided nine supporting documents to show detail and context for those facts (Items 6-14). Applicant did not object to the request or documents, and I granted Department Counsel's request.

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), and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact**

Applicant admitted the allegations contained in SOR ¶¶ 1.a through 1.e, and 2.a through 2.c. (Item 2.) His admissions, including those made in his March 2013 Counterintelligence Focused Security Screening Questionnaire and Interview, are incorporated herein as findings of fact. (Items 2, 4.)

Applicant was born in Pakistan in 1987 and is 27 years old. He attended high school there. In September 2006 he immigrated to the United States as a child of a U.S. permanent resident. He became a naturalized U.S. citizen in July 2012. He has a current U.S. passport that will expire in 2022. He lost his Pakistani passport that will expire in 2014. (Items 4, 5.)

After arriving in the United States, Applicant attended a university for a couple semesters. He worked as a cashier from October 2006 to September 2009. He then drove a taxicab until February 2013, when he obtained a position with a defense contractor, working as a linguist with the U.S. Army in a Middle Eastern country. (Items 4, 5.) He stated in his response to the FORM that on September 26, 2013, while on a mission with the Army, his team was ambushed by the Taliban, who shot at their truck numerous times with a machine gun. (AE A.)

Applicant's parents were born in Pakistan. He has two siblings who were born in Pakistan. His father immigrated to the United States in 1991. Sometime later, Applicant's mother, sister, and brother immigrated to the United States through his father's sponsorship, and prior to the time Applicant immigrated. (AE A.) All three of those family members have become naturalized U.S. citizens. Another sister and brother were born in the United States. His sister, who was born in Pakistan, is on active duty with the U.S. Army. She works as a linguist for the Army in the Middle East. (Item 4; AE A.)

Applicant's paternal grandparents were born in Pakistan. His grandmother was a citizen and resident until her death in June 2013. His elderly grandfather remains a citizen and resident. He lived with those grandparents before immigrating to the United States. (AE A.) In February 2013 Applicant indicated that he contacted his grandparents twice a month while his grandmother was alive. (Item 4.) In his November 2013 response to the FORM, Applicant stated that he calls his grandfather twice a year, at the holidays. From 2007 until her death in June 2013, Applicant sent his grandmother \$300 a month to help support family members. (Item 4; AE A.)

Applicant's paternal uncle and four aunts are citizens and residents of Pakistan. He contacts his aunts once or twice a month, and his uncle three times a year. Applicant's maternal grandparents were born in Pakistan, but are now residents of Germany. (AE A; Item 4.) Applicant has a friend who is a citizen and resident of Pakistan. He contacts his friend twice a month. (Item 5.)

On February 25, 2013, Applicant submitted an e-QIP. Subsequently, the Government alleged that he intentionally falsified answers to three questions on the e-QIP. Applicant denied that he falsified answers to the said questions on the e-Quip. (Item 2; AE 1.)

In response to "*Section 19 – Foreign Contacts,*" of the e-QIP, Applicant failed to disclose his grandparents, uncle, four aunts, and friend all of whom were citizens and residents of Pakistan. He listed his parents and siblings. Applicant explained that he did not understand the question and made a mistake. (AE A.) He noted, however, that he disclosed in the e-QIP that he lived with his grandparents before moving to the United States. (*Id.*) In supplemental documents within the Counterintelligence Focused Security Screening Questionnaire, prepared on February 25, 2013, and March 10, 2013, he listed numerous foreign relatives and friends, with whom he had contact, including his grandparents, other relatives, and friends. (Item 4.)

In response to "*Section 20A – Foreign Financial Interest – Foreign National Support,*" of the e-QIP, Applicant failed to disclose that he was providing \$300 monthly to his grandmother in Pakistan for family support. During an interview with a government investigator in March 2013, Applicant stated that he was sending money to his grandmother since 2006 or 2007. He said he did not disclose that information in his e-QIP because he did not know that he was required to do so. (Item 5 at 2.) In his October 2013 Answer to the SOR, he explained that he did not disclose it because "It

was considered very immaterial amount, paid as some sort of charity to my Grand-Mother. Therefore, I could not consider it while updating the final copy of SF-86. I sent this money through Western Union and there is no other reason to hide such information (Sic)." (Item 2.) He restated that answer in his November 2013 response to the FORM. (AE A.)

In response to "Section 26 – Financial Record – Delinquency Involving Enforcement," of the e-QIP, Applicant failed to disclose that a tax lien was filed against him in 2010 for failing to pay taxes on a food vendor license. Said lien was released as paid in January 2012. Applicant was unaware that this unpaid tax for a vendor's license became a tax lien until he reviewed his credit report in conjunction with applying for a security clearance in 2013. He stated that he never used the license, and hence did not pay the quarterly fees. After learning of the debt, he paid the fee. (Item 5 at 4.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability.

## **Pakistan**

I take administrative notice of the facts set forth in the Administrative Notice documents (FORM) concerning Pakistan, which are incorporated herein by reference. Of particular significance are Pakistan's history of political unrest, and the presence of the Taliban and al-Qaeda, terrorist organizations, which continue to assert power and intimidation within the country and the bordering country of Afghanistan. Safety and security are key issues because these terrorist organizations target United States interests in Pakistan and in Afghanistan by suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. Few sections of Pakistan are safe or immune from violence, and the government has difficulty enforcing the rule of law.

## **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, 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According

to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 pertaining to foreign influence as follows:

Foreign contacts and interest 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 sets out 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.

The mere circumstance 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. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or inducement. The risk of coercion, persuasion, or duress is 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 United States, or is a known terrorist haven. The relationship of Pakistan with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Pakistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist family members living in Pakistan.

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 his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Pakistan has an enormous problem with terrorism. Applicant's relationship with his grandfather, uncle, three aunts, and a friend living in Pakistan creates a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist those family members in Pakistan by providing sensitive or classified information. His relationship with his grandmother no longer poses a concern. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns in this case are:

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. After leaving Pakistan, Applicant maintained regular contact with his grandfather, uncle, aunts, and a friend, who are citizens and residents of Pakistan. He also maintained contact with his grandmother until her recent death, and provided her some financial support for over six years. While his loyalty and connections to his family members in Pakistan are positive character traits, for security clearance purposes, those connections negate the possibility of mitigation under either mitigating condition in this case. Although Applicant has been working for the Army for a period of time, he failed to provide sufficient evidence to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Pakistani citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) has some application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established some connections to the United States. In 2006 he immigrated to the United States and joined other family members here. In July 2012, albeit less than two years ago, he became a U.S. citizen. His parents and four siblings are U.S. citizens and residents. He began working in the United States after arriving in 2006. He has been working with the U.S. Army in the Middle East since February 2013. There is no evidence that he owns real estate or significant personal property in the United States.

## **Personal Conduct**

The security concerns pertaining to the personal conduct guideline are 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.

The Government alleged in SOR ¶¶ 2.a, 2.b, and 2.c that Applicant deliberately falsified answers to questions on his February 2013 e-QIP, by failing to disclose information relevant to foreign contacts, foreign national support, and a financial delinquency. The Government contended that these falsifications constituted potential 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.

Applicant acknowledged that he did not disclose the adverse information about all three matters, but denied that he intentionally misled the Government regarding them. When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation that he did not intentionally fail to disclose all of his foreign contacts in Pakistan is credible. He disclosed his previous residence with his grandparents in Pakistan in the e-QIP. On or about the same day he completed the e-QIP he submitted an extensive addendum to his Counterintelligence Focused Security Screening Questionnaire, listing numerous relatives and contacts living in foreign countries, including those listed in the SOR. This allegation is found in his favor.

Applicant gave two explanations for not disclosing information about sending \$300 to his grandmother on a monthly basis for at least six years. During his interview in March 2013 he said that he did not know that he was required to disclose that information. Subsequently in two written responses he stated that he considered his small monthly payments to be charity and "immaterial," and therefore he did not need to disclose it. Without additional clarifying information from him about his responses, the record evidence indicates that Applicant made a conscious decision not to disclose requested information in his e-QIP. This allegation is found against him.

Applicant's explanation for failing to disclose the tax lien is credible. He did not know that a 2011 tax lien had been filed against him until he reviewed his credit report



in 2013. He considered the debt resolved as of 2012. This allegation is found in his favor.

### **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. My Guideline C and B analysis is applicable to the whole-person analysis well.

There are foreign influence security concerns arising from Applicant's history of connections to Pakistan that weigh against granting him a security clearance. Applicant, his parents, and two siblings were born and resided in Pakistan. His grandfather, uncle, four aunts, and a friend are residents and citizens of Pakistan. He went to high school there. He has been a citizen for less than two years. His current work with the U.S. Army creates a greater risk of potential coercion, should terrorists learn of his work with the Army and that there are family members residing in Pakistan.

There are a few factors that weigh in favor of granting Applicant a security clearance. He established some connections to the United States, including U.S. citizenship since 2012. His parents and four siblings are U.S. citizens and residents. His sister is on active duty in the U.S. Army. He has worked in the United States since 2006 after arriving here. In addition, since 2013 Applicant has worked with the U.S. Armed Forces in some capacity in the Middle East. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 (App. Bd. Nov.14, 2006) that in some circumstances it may be relevant. The Board stated as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the

security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

In this case, Applicant did not submit any independent evidence or documentation from his Army command to establish that he has demonstrated ongoing compliance with security procedures during his position or that he has made a significant contribution to the national security under high-risk circumstances. That evidence is necessary in order to consider the above ruling for assistance in mitigating those factors that weigh against granting Applicant a security clearance. They include his foreign background, current family living in Pakistan, lack of significant longstanding connections to the United States, and a short period of U.S. citizenship.

Another factor that weighs against Applicant's request is his explanation for failing to disclose the monthly support he sent to his family in Pakistan for six years. He seemingly decided that those monthly payments were not relevant, and chose not to disclose them. Without more information addressing that allegation and his explanations, the personal conduct security concerns cannot be mitigated.

Overall, the record evidence continues to leave me with sufficient questions as to Applicant's present eligibility and suitability for a security clearance. He has not carried his burden to mitigate the 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:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

Subparagraph 2.c:

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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Shari Dam  
Administrative Judge