



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 13-00805

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant has not mitigated the security concerns related to foreign influence. Accordingly, his request for a security clearance is denied.

Statement of the Case

On January 8, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline B (foreign influence) of the Adjudicative Guidelines (AG).¹ In his January 28, 2014 Answer to the SOR, Applicant admitted the allegations under Guideline B and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a file of relevant material (FORM) dated March 10, 2014. DOHA forwarded the FORM to Applicant, along with five government exhibits (GE 1-5) and government documents related to Afghanistan and Pakistan. Applicant received the FORM on May 10, 2014. He was

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all security clearance adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

given an opportunity to respond with documentation to refute or mitigate the allegations. Applicant submitted two exhibits (AE A-B). Department Counsel had no objection. The case was assigned to me on June 26, 2014, for an administrative decision based on the record.

Procedural Ruling

I take administrative notice of facts related to Afghanistan and Pakistan, included in U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's Response, I make the following additional findings of fact.

Applicant, 64 years old, was born in Afghanistan. In 1975, he earned a bachelor's degree in meteorology in Afghanistan. He served six months of mandatory military training in the Afghan army after graduating college in 1975. In 1978, Applicant married an Afghan citizen in Afghanistan. His wife is a naturalized U.S. citizen. He has lived in the United States since approximately 1978, and became a naturalized U.S. citizen in 2009. From 1997 to 2010, Applicant worked as a cab driver in the United States. In his Response to the FORM, he stated he has worked for seven years as a maintenance person for an international organization based in the United States, and has also operated "[a] few fast food restaurant (Fried chicken and Pizza) businesses." From 2010 to the present, he has worked for a defense contractor in Afghanistan as a cultural advisor and linguist. (GE 3-5; AE A)

Applicant listed five children on his security clearance application. His 35-year-old son was born in Afghanistan in 1979. Applicant stated that his son is a legal permanent resident living in the United States, and he has not had contact with him since 1997. Applicant's second son was born in Afghanistan in 1980. He is a naturalized U.S. citizen, residing in the United States. Applicant's remaining three children were born in the United States. They range in age from 19 to 30. They are U.S. citizens, residing in the United States. Applicant stated in his Response to the FORM that "I have well educated family, all 3 of my children are well educated and college students." (GE 4, 5; AE A)

The SOR alleges that Applicant's cousin is a citizen and resident of Pakistan (allegation 1.d) However, Applicant stated in his Answer this cousin died in December 2013. Applicant stated during his security interview that none of his family members are affiliated with the Afghan government, and none know that he is undergoing an investigation for a security clearance. (GE 3, 5) Applicant stated in his interrogatory response:

I will never disclose my work related information to any of my family members because I don't want to jeopardize their and U.S. national security. If I see any threat posing to my family and U.S. national security I will notify the U.S. government as soon as possible. (GE 5)

Applicant listed four brothers and two sisters in his security clearance application. He provided conflicting information about the citizenship and his frequency of contact with some of the following four siblings, who reside in the United States.²

- Applicant's brother (A) is an Afghan citizen with legal U.S. residency. During his security interview, Applicant stated he is in touch with A about four times per year by telephone, but in his security clearance application he said they are in touch once per year. (GE 4, 5)
- In his security clearance application, Applicant said his brother (B) is a U.S. citizen, but during his security interview, he said B is an Afghan citizen. Applicant does not know B's occupation, and has not had contact with him since 1995. (GE 4, 5)
- In both his security clearance application and at his security interview, Applicant stated his brother, C, is an Afghan citizen and a U.S. legal permanent resident. He is employed as a linguist by the same company as Applicant. They have once yearly contact by telephone. (GE 4, 5)
- Applicant's sister (D) is a homemaker. He stated in his security clearance application that D is an Afghan citizen, and a legal permanent resident of the United States, but he noted in his 2013 security interview that she had just received her U.S. citizenship. (GE 5) In his security clearance application, Applicant said their last in-person contact was in 2009, and they were in touch by telephone annually. In his security interview, he said they are in touch by telephone two or three times per month. (GE 4, 5)

The SOR alleges that Applicant also has three living relatives who are foreign citizens and residents. Applicant's brother, E, is a citizen of Afghanistan and resides in Pakistan. He is 62 years old. In Applicant's 2013 security clearance application, he listed

² Applicant's siblings who reside in the United States are not alleged in the SOR. The Appeal Board has held that facts not alleged in the SOR may only be considered for the following limited purposes: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive § 6.3.) See, ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010).

his brother's occupation as "self-employed shop owner," but in his 2014 response to DOHA interrogatories, he described his brother as retired. In his security clearance application, Applicant stated he had "[n]ot had contact with this brother since 2003," (GE 4) but in his 2014 Answer to the SOR, Applicant said, "I've not visited or seen him in the past 7 years [i.e., 2007], since he moved from the United States to Pakistan." (GE 3) However, during his security interview, Applicant said this brother had never been to the United States. (GE 5) In his Answer, Applicant stated he is in contact with his brother in Pakistan by telephone once or twice per year. (GE 3, 5)

The SOR also cites Applicant's sister (F) and sister-in-law (G), who are citizens of Afghanistan and reside in Pakistan. Applicant stated during his security interview that his sister F is a citizen of Afghanistan; however, in his security clearance application, he stated she is a citizen of Pakistan. (GE 4, 5) Applicant's sister-in-law³ (G) is a citizen of Afghanistan. Both his sister and sister-in-law are homemakers. He has not seen them in person in 33 years. Applicant is in touch with them by telephone once or twice per year. Applicant stated in his Response to the FORM that "[T]hey call me once or twice a year on EID occasions. However, I have never called them and I don't have feeling for them." He noted in his Answer that their "[r]esidence does not, in any way, affect my loyalty to the United States" (GE 3-5; AE A)

DOHA interrogatories, provided to Applicant in November 2013, asked why Applicant had failed to disclose, in a 2010 investigation, that he provided money to relatives in Afghanistan and Pakistan since 1982. Applicant responded that he usually sent \$100 to his brother or sister for expenses related to a religious holiday. In 2011, Applicant sent his brother E in Pakistan \$500 to help pay for their mother's funeral expenses. He stated during his security interview that he provides no other foreign financial support. The record contains no information on Applicant's U.S. property, financial interests, or assets. (GE 5)

Applicant provided a May 2014 letter of appreciation from his linguistics manager. He noted that Applicant has provided excellent communication and translation services in support of U.S. operations in Afghanistan. He is respected by his command, his peers, and Afghan military leaders. He advises other linguists and military personnel, and has displayed a high degree of integrity and responsibility in his work. (AE B)

The Islamic Republic of Afghanistan (Afghanistan)

Afghanistan is an Islamic Republic of 28 million people with a democratically elected president. It has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from the country, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban had risen to power and controlled 90

³ Applicant discussed two sisters, but not a sister-in-law, in his security clearance application and during his security interview. However, he admits in his Answer and in his FORM Response that he has a sister-in-law who is a citizen of Afghanistan and resides in Pakistan. (GE 1; AE A)

percent of the country, imposing aggressive and repressive policies, engaging in human rights violations, and providing sanctuary to Osama bin Laden.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. Afghanistan's first democratic election took place in October 2004, and the new government took power.

A Department of State report notes that, as of May 2013, Afghanistan continued to experience aggressive and coordinated attacks by the Afghanistan Taliban, the Haqqani Network, and other al-Qaida-affiliated groups. A number of the attacks were launched from the groups' safe havens in Pakistan. Afghan security forces now provide most of the security in Afghanistan, in anticipation of the withdrawal of U.S. and coalition forces.

Terrorists, including al-Qaida and the Taliban, continue to assert power and intimidation within Afghanistan. The risk of terrorist activities is high. The Haqqani Network is a militant faction operating in Afghanistan that may be the most significant threat to Afghanistan security. On September 7, 2012, the United States declared the Haqqani Network a foreign terrorist organization. Terrorist organizations target United States and Afghan interests by suicide operations, bombings, assaults, and hostage taking. The country's human rights record is poor and violence is rampant. According to the U.S. Department of State (DOS), insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The United States and other donors continue to fund development projects in Afghanistan, while increasingly delegating project implementation to the Afghan government. However, corruption is an ongoing issue. A November 2013 DOD report noted that criminal networks, insurgent groups, and corrupt government officials are often interlinked via multi-layered connections, making ties between the officials and criminal activity difficult to prove and prosecute. Afghan government stability after 2014 is at risk from weak and corrupt governance and insurgent safe havens in Pakistan.

The Islamist Republic of Pakistan (Pakistan)

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. Members of the Taliban are known to be in the Federally Administered Tribal Area (FATA) region, in Balochistan Province, which borders Iran and Afghanistan, and in the Khyber Pakhtunkhwa in the FATA region. The FATA region is a sanctuary to al-Qaida and other extremist groups. The Haqqani Network also operates in Pakistan. A 2013 Department of State report notes

that the Pakistani military undertook operations against groups that conducted attacks in Pakistan, but other groups, such as Lashkar-e-Tayyiba continued to operate there.

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.”⁴ 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, and train and operate there to plan attacks against the United States and its allies in Afghanistan. Taliban senior leaders also enjoy safe haven in Pakistan, which allows them to provide strategic guidance to insurgents with impunity. A November 2013 DOD report noted that improvised explosive devices (IEDs)—which account for more Afghan, Pakistani, and coalition casualties than any other weapon—are made primarily from fertilizer and military or commercial-grade explosives produced in, or imported through, 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 *Human Rights Report* on Pakistan issued by the U.S. DOS in April 2013 notes reports that Pakistani domestic intelligence services monitored political activists, politicians, suspected terrorists, and the media. 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.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline B.

⁴ U.S. Department of State, *Country Reports on Terrorism 2012*, Chapter 5, Terrorist Safe Havens.

⁵ Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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.

Under AG ¶ 7 of Guideline B, I have considered all the disqualifying conditions, especially the following:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

Family ties to residents or citizens of a foreign country do not automatically disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. The country in question also must be considered.⁹ The nature of a country's government and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to coercion. The existence of terrorism in the country is also relevant to evaluating the potential for coercion, and an administrative judge must consider terrorist activities in the country at issue.¹⁰ Violent terrorists, including al-Qaida and the Taliban, operate against United States interests within Pakistan. It has a poor human rights records. Applicant maintains telephone contact with foreign family members in Pakistan, where authorities wiretap private communications.

The Appeal Board has held:

The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases, as is the nature of the foreign country. See, e.g., ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007); ISCR Case No. 08-03798 at 2 (App. Bd. Jan. 21, 2010) (Activities of [country] government in monitoring private communications were relevant in evaluating the security significance of the applicant's [country] relatives).¹¹

Applicant's family ties in Pakistan constitute a heightened risk of foreign coercion. AG ¶¶ 7(a) and (b) apply.

I have considered the mitigating conditions under AG ¶ 8:

(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

⁹ See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

¹⁰ ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006); ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004).

¹¹ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

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 contacts with his brother, sister, and sister-in-law, who are citizens of Afghanistan and residents of Pakistan. Terrorist groups, including the Haqqani Network, Taliban, and al-Qaida, operate in Pakistan. The State Department has designated all three as foreign terrorist organizations. These groups engage in killings, extortion, and hostage-taking. Given these facts, Applicant could be placed in a position of having to choose between the interests of foreign family members and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has long-standing ties to the United States including his 35 years of residence; his five years as a U.S. citizen; his wife's U.S. citizenship; his children who are either legal permanent residents or U.S. citizens; and his many years of U.S. employment. However, security concerns remain. Given Applicant's ties to immediate family members who live in an unstable country where terrorist groups operate against U.S. interests, I cannot confidently conclude how Applicant would resolve a potential conflict of interest. Applicant receives only partial mitigation under AG ¶ 8(b).

Applicant stated that he is in contact with his brother, sister, and sister-in-law in Pakistan by telephone once or twice per year, but has not seen his sister, and sister-in-law in person in 33 years. However, he provided conflicting information about his contacts with his brother. In his security clearance application, he stated he had not seen him since 2003, but in his Answer to the SOR, he said he had not seen him in seven years, which would have been 2007. He stated during his security interview that his brother had never been in the United States, but in his Answer, he stated that his brother left the United States in 2007.

In addition, Applicant has provided financial assistance to his family in Pakistan. He sent funds to his brother for his mother's funeral in 2011. It also appears from the record evidence that he provided about \$100 per year to his brother or sister in Pakistan between 1982 and at least 2010. His conduct shows that he has ties of obligation to his foreign siblings. His most recent statement that he no longer provides money to his relatives in Pakistan must be viewed in light of the fact that, according to the DOHA interrogatory, he did not disclose his financial support of his family in his 2010 investigation.

As Applicant chose to have his decided based on the written record, without a personal appearance, these contradictions cannot be explored. But given the evidence at hand, I cannot conclude that his relationships with his relatives in Pakistan are so casual that they fail to raise a concern of foreign influence or coercion. AG ¶ 8(c) does not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."¹² Applicant has positive factors weighing in his favor, including his 35 years of U.S. residence; his five years as a U.S. citizen; his five children who are U.S. citizens or legal permanent residents; his wife's U.S. citizenship; and his support of the United States through his work with U.S. forces in Afghanistan.

However, Applicant's ties to his family members who are citizens of Afghanistan and residents of Pakistan raise security concerns. He maintains telephone contact with his brother, sister, and sister-in-law, who live in a country subject to monitoring of communications by authorities, as well as ongoing threats from terrorist organizations. At least until 2010, he provided regular financial contributions to his family, and in 2011 he sent \$500 for his mother's funeral expenses. His credibility is at issue based on conflicting information about the frequency of his contacts. Applicant has not met his

¹² See Exec. Or. 10865 §7.

burden to show that his family living in Pakistan does not constitute a risk. I conclude he has not mitigated the security concern under Guideline B.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised. Such doubts must be resolved in favor of the Government.

Formal Findings

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

Paragraph 1, Guideline B	AGAINST APPLICANT
Subparagraphs 1.a – 1.c	Against Applicant
Subparagraph 1.d	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge