



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



In the matter of:)
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)
)
Applicant for Security Clearance)

ISCR Case No. 13-00883

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Nicole Smith, Esq.

04/11/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the security concerns related to foreign influence and foreign preference. Accordingly, his request for a security clearance is granted.

Statement of the Case

On November 6, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline B (foreign influence) and Guideline C (foreign preference) of the Adjudicative Guidelines (AG).¹ In his Answer to the SOR, Applicant admitted the three allegations under Guideline B, and denied the single allegation under Guideline C. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On February 27, 2014, I convened the hearing. I admitted three Government exhibits (GE 1-3) and two Applicant exhibits (AE A-B). By email dated February 27, 2014, Applicant requested I hold the record open for additional documentation, and Department Counsel did not object. The email correspondence is marked as Hearing Exhibit (HE) IV. I

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

granted the request. Applicant timely submitted two character reference letters, which I admitted as one document, AE C. DOHA received the transcript on March 7, 2014, and the record closed on March 19, 2014.

Procedural Matters

I take administrative notice of facts related to Pakistan, included in nine U.S. Government documents provided by Department Counsel, and marked as HE II.² I also take administrative notice of documents related to Pakistan submitted by Applicant, marked as HE III. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Findings of Fact

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

Applicant is 22 years old, single, and lives with his parents. He was born in Pakistan, and came to the United States in 2007, at the age of 16. From 2008 to 2010, he worked more than 40 hours per week in a retail store while attending high school, to help support his family. He graduated in 2011. (GE 1, 2; Tr. 21-32, 35)

Guideline B, Foreign Influence

Applicant's father has worked as a linguist in Afghanistan for a federal contractor since 2010, and suggested Applicant apply for the same position. In January 2012, Applicant moved to another state where he worked at a military base, helping train soldiers in the Afghan language and culture before they deployed. In March 2012, he accepted a full-time position with the same federal contractor as his father. After several months' training, he deployed with the Army to Afghanistan as a linguist. While there, he accompanied the soldiers on missions to gather information on terrorist activities. The missions at times came under attack from roadside bombs and suicide bombers. Three linguists and six soldiers in his group were killed. He served in Afghanistan from June 2012 to October 2013. Applicant's company intends to send him to Afghanistan when his security clearance adjudication is complete. Applicant became a naturalized U.S. citizen in April 2013. (GE 1, 2; Tr. 21-33)

Applicant's parents were born in Pakistan, and currently live in the United States. His father became a U.S. citizen in January 2013. Applicant's mother, a homemaker, is also a naturalized U.S. citizen. Applicant's two sisters and one brother reside in the United States and became naturalized U.S. citizens in about December 2013. (Tr. 32-33)

² HE I is a DOD personnel database printout showing that Applicant is currently sponsored by a federal contractor.

Approximately 40 to 50 of Applicant's extended family members, including aunts, uncles, and cousins, reside in the United States. They began immigrating to the United States in the early 1970s. On his counterintelligence security questionnaire, Applicant listed 11 relatives who are U.S. citizen-residents, and whom he contacts once per week to once per year. He also listed 14 friends who are U.S. citizens and residents with whom he is in contact several times per week to once per month. Half of them work for the U.S. government. Along with his father, four of Applicant's relatives work for the U.S. government, primarily as linguists or cultural advisors. (GE 2; Tr. 33)

Applicant has financial assets in the United States. He uses and makes the payments on a car that his father owns, as well as a motorcycle. He also has a bank account with a balance of approximately \$120,000, which he saved from his position as a linguist. Applicant has no property, bank accounts, investment accounts, or other financial ties to Pakistan. (GE 2; AE B; Tr. 34-37)

Applicant's 66-year-old maternal grandfather is a citizen and resident of Pakistan. In 2004, he retired from a government position with the passport and immigration services office. When Applicant lived in Pakistan, they were not close; he had contact with his grandfather once per year. Applicant does not know when he retired, or his current activities, because he has not spoken with his grandfather since he left Pakistan in 2007. Applicant estimated his mother is in touch with her father about twice per year by telephone, but Applicant does not talk to him. (GE 2; Tr. 37-41)

Applicant has extended family members who are citizen-residents of Pakistan, including an uncle and his two sons, Applicant's cousins. His uncle is a pilot, retired from the Pakistani Air Force. He is now a commercial pilot for a Pakistani airline. He is also a legal U.S. resident. He owns a home in the United States and comes to the United States about twice per year. Applicant last saw his uncle in 2008. His two sons, Cousin A and Cousin B, are members of the Pakistani Air Force. As a child in Pakistan, Applicant saw his cousins about once per year. He last saw his two cousins in 2007, before he left Pakistan. Applicant has had no contact with this family since 2008 because Applicant's family has not been on speaking terms with them since that time. (GE 2; Tr. 41-61)

Applicant has three others cousins who are citizens and residents of Pakistan. Cousins C is a pilot in the Pakistani Air Force. Cousins D and E are in the Pakistani Army. When he lived in Pakistan, Applicant saw them about once a year until. After about age ten, he saw them once every five years. He saw them infrequently because his family did not have a good relationship with them. Applicant has not seen Cousins C, D, or E since 2006 or 2007, before he left Pakistan. (GE 2; Tr. 41-61)

Guideline C, Foreign Preference

Applicant possessed a Pakistani passport that was valid from 2005 until it expired in 2010. In March 2012, Applicant renewed it so that he could travel to Afghanistan to work for the U.S. military. It was valid until September 2013. When Applicant completed

his security clearance application in March 2012, he possessed the Pakistani passport. (Answer; GE 1-3; Tr. 61-65)

In April 2013, Applicant returned to the United States from Afghanistan for his U.S. naturalization ceremony. He also obtained his U.S. passport. He submitted an affidavit showing that after he returned to Afghanistan, he surrendered his Pakistani passport to his facility security officer (FSO) on May 1, 2013, and it was destroyed. Applicant signed a notarized document officially renouncing his Pakistani citizenship on the same day. He has not been in Pakistan since 2007. He plans to buy a home in the United States, and earn a college degree. He has no intention to return to Pakistan because, "I have nothing there to go to . . . Everything I have is here." (Answer; GE 3; Tr. 61-65)

Character Evidence

Applicant provided references regarding his work performance and character. A lieutenant colonel who worked with Applicant in Afghanistan called him the "go-to linguist" whose knowledge, professionalism, and competence made him "absolutely invaluable." He stated that Applicant "was always there, side by side with us on many dangerous missions, and to this day, I trust him with my life and those of my soldiers. He continually put himself at risk, volunteering for all the toughest missions alongside Afghan and American Soldiers, to make sure that we accomplished our mission." (AE C)

A captain who worked with Applicant stated that he was trusted with sensitive mission and operational information and "always placed the interests of the US Government, the United States Army, and our team above his own and all other countries." A first lieutenant who was the linguist manager in Afghanistan said that the team relied heavily on Applicant "due to his high level of commitment to our missions and his extremely high level of reliability" and that Applicant was always the chosen translator for high-level meetings. A captain with three combat deployments evaluated Applicant as "the finest linguist I have ever worked with." He noted Applicant ". . . risked his life by going out on several missions . . . and operated well outside the normal range of responsibility for a linguist." The captain stated, "He is a brother just as any of the Soldiers I have served with." (AE A, C)

The Islamist Republic of Pakistan (Pakistan)

Pakistan is a parliamentary federal republic in South Asia. It held successful elections in February 2008 and has a coalition government. However, terrorist networks operate within Pakistan. Members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) region, in Balochistan Province, 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 with impunity in Pakistan. On September 7, 2012, the United States formally declared the Haqqani Network a foreign terrorist organization.

The 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.”³ The DOS concludes that, despite efforts by Pakistani security forces, groups including Afghan and Pakistani militants 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. In 2011, U.S. special forces personnel found and killed al-Qaida leader Osama bin Laden 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 notes that Pakistani domestic intelligence services monitored political activists, suspected terrorists, and the media. Credible reports indicate that authorities routinely used wiretaps, and intercepted and opened mail without requisite court approval.

The United States is working with Pakistan to strengthen their relationship because it is vital to regional and international security. In January 2014, Secretary of State Kerry noted that, since the country’s elections in 2012, ties between the two countries have strengthened on a broad range of issues, including security.

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.⁴ 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 Guidelines B and C.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of

³ U.S. Department of State, *Country Reports on Terrorism 2012*, Chapter 5, Terrorist Safe Havens. (HE II)

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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.⁶ 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.⁷

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.

The following disqualifying conditions under AG ¶ 7 are relevant:

(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.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Family ties with a resident or citizen of a foreign country, *per se*, do not 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. Applicant's grandfather, uncle, and cousins are citizens and residents of Pakistan. The country in question must be considered.⁸ Although the United States and Pakistan are working to strengthen their relationship, terrorist networks operate in Pakistan against United States interests and terrorists find safe haven there. The country has a poor human rights record. Several of Applicant's foreign relatives are members of the Pakistani military. Applicant's foreign relatives create a heightened risk of foreign exploitation and a potential conflict of interest. AG ¶¶ 7 (a) and (b) apply.

I have considered the mitigating conditions under AG ¶ 8, especially the following:

(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.

Although Pakistan represents a heightened risk of exploitation, Applicant has not lived there for seven years. He has not been in touch with his foreign family members in the past six to eight years. Although his grandfather was a government employee, Applicant had a distant relationship to him when Applicant lived in Pakistan, and he has not spoken to his grandfather since he moved to the United States seven years ago. He has little to no relationship to his foreign uncle and cousins, because his family and theirs broke off contact in 2008. Given the infrequent contact between Applicant and his foreign family, and their unfriendly relationship, it is unlikely he would be placed in a position of having to choose between foreign and U.S. interests, or be at risk of foreign influence of exploitation. AG ¶¶ 8(a) and 8(c) apply.

Applicant has worked in dangerous, high-risk situations since 2012, in support of U.S. forces. He served the United States by placing himself in harm's way in a combat

⁸ 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).

zone. His performance has been exemplary, according to the officers' letters in his support. In contrast to his tenuous ties to extended family in Pakistan, his family and friends in the United States, with whom he is frequently in contact, are not only citizens and residents but many also serve the U.S. government in their employment. Because of these U.S. ties, and Applicant's demonstrated commitment to United States interests, it is unlikely that he would face a conflict of interest between his loyalty to the United States and Pakistan. AG ¶ 8(b) applies.

Guideline C, Foreign Preference

The security concern under Guideline C, AG ¶ 9, states:

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.

Under AG ¶ 10, the following disqualifying condition is relevant:

(a) 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:

(1) possession of a current foreign passport.

Applicant possessed a valid foreign passport. He used it to travel to Afghanistan in 2012, to travel from Afghanistan to the United States later that year, and to travel from Afghanistan to the United States for his U.S. citizenship ceremony in 2013. He possessed the foreign passport until May 2013. AG ¶ 10(a)(1) applies.

AG ¶ 11 contains factors that can mitigate disqualifying conditions. I have considered all the mitigating conditions, especially the following:

(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.

Applicant used his foreign passport for travel in 2012 and 2013, but his trips occurred before he became a U.S. citizen in April 2013. On May 1, 2013, Applicant surrendered his Pakistani passport to his FSO. He provided a notarized statement that he agreed to the destruction of the passport. Applicant also provided copies of documentation indicating he officially renounced his Pakistani citizenship. His documented actions indicate that he was not only willing, but in fact did, renounce his foreign citizenship. AG ¶¶ 11(b) and (e) 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.

Applicant has little connection to Pakistan. He left as a teenager, has not been there in seven years, and has no plans to return. He has no property or funds there. His ties to remaining extended family members in Pakistan are tenuous. In contrast, he has strong ties to the United States. His parents and siblings are U.S. citizens. His father works for the U.S. government as a linguist. The greater part of Applicant's extended family—40 to 50 members—left Pakistan in the 1970s and are citizen-residents of the United States. Many members of Applicant's circle of family and friends are not only citizens and residents of the United States, but serve the U.S. government as linguists, federal contractors, or cultural advisors. He has substantial funds in the United States. He demonstrated his preference for the United States when he surrendered his foreign passport for destruction and formally renounced his foreign citizenship.

Moreover, Applicant served U.S. interests in a combat zone, and his character references establish his significant contributions to U.S. national security. According to Appeal Board jurisprudence, a judge need not assign significant weight to an applicant's past conformity with security procedures or regulations to mitigate more immediate disqualifying circumstances. The Appeal Board has held:⁹

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

⁹ ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006).

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.

Given the record evidence that Applicant has only tenuous relations with his foreign family, and that he has placed himself in harm's way to support the interests of the United States over his own, I find the security concerns regarding foreign influence and foreign preference are mitigated.

For all these reasons, I conclude Applicant has mitigated the cited security concern. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts raised.

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	FOR APPLICANT
Subparagraphs 1.a – 1.c	For Applicant
Paragraph 2, Guideline C	FOR APPLICANT
Subparagraph 2.a	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge