



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



In the matter of:)
)
) ISCR Case No. 13-01285
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Department Counsel
For Applicant: *Pro se*

06/23/2014

Decision

DAM, Shari, Administrative Judge:

Applicant was born in Pakistan and immigrated to the United States in November 2003. He became a naturalized U.S. citizen in November 2012. His father and four of six siblings were born in Pakistan and are naturalized U.S. citizens. His mother is a Pakistani citizen and permanent resident of the United States. Applicant has two siblings (a brother and a sister) who are citizens and residents of Pakistan, as are their families. In 2008 Applicant and his father purchased a \$40,000 home in Pakistan for his brother and family living there. Applicant failed to present sufficient evidence to mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 2, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On January 8, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B, Foreign Influence. 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 the SOR in writing on January 22, 2014, and requested a hearing before an administrative judge (AR). The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 17, 2014, and issued a Notice of Hearing on April 23, 2014, scheduling the hearing for May 27, 2014. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which were admitted without objection. Applicant testified. He did not offer any exhibits. DOHA received the transcript of the hearing (Tr.) on June 6, 2014.

Procedural Rulings

Department Counsel requested administrative notice (AN) of facts concerning Pakistan. She provided nine supporting documents to show detail and context for those facts (GE 4.) 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 all allegations contained in SOR ¶¶ 1.a through 1.g, except those contained in 1.e. His admissions, including those made in a June 19, 2013 Counterintelligence Focused Security Screening Questionnaire and Interview, are incorporated herein as findings of fact. (AR; GE 3.)

Applicant was born in Pakistan in 1983 and is 30 years old. He is not married. He attended high school there. In November 2003 he immigrated to the United States when he was 20 years old, as a child of a U.S. permanent resident. He became a naturalized U.S. citizen in November 2012. He has a current U.S. passport that will expire in November 2022. His Pakistani passport expired in 2010. (GE 2, 3.)

After arriving in the United States, Applicant secured a part-time sales position and worked there from December 2003 to January 2006. From May 2005 until April 2011 he was a full-time assistant manager at a bank. In January 2008 he started working as a part-time self-employed taxi driver. He currently works fulltime as a business system analyst for a large bank. (Tr. 44.) Applicant earned two associates'

degrees from a U.S. community college in 2008, one in general studies and one in information technology. (GE 2.)

Applicant's parents were born in Pakistan. His father, age 67, immigrated to the United States in 2000, having been sponsored by one of his sisters who immigrated before that. He works as a bus driver. His mother, age 64, is a citizen of Pakistan, but resides in the United States as a permanent resident. Applicant has four sisters and two brothers, all of whom were born in Pakistan. Three sisters are naturalized U.S. citizens. Two of them are residents of the United States. The third currently is a resident of Saudi Arabia and works for the U.S. Government. She has a security clearance. (Tr. 53.) One of his brothers is a naturalized U.S. citizen and resident of the United States. He was a linguistic instructor for a defense contractor and trained soldiers before deploying to the Middle East. He now drives a taxicab because he completed his contract. He has applied for a linguist position with a defense contractor. He previously resided in Pakistan with his wife, a citizen and resident of Pakistan who still lives there. (Tr. 35, 33, 40, 47.)

Applicant's fourth sister is a citizen and resident of Pakistan. She is a housewife and her husband is a teacher. They have two children. Applicant's second brother is a citizen and resident of Pakistan. He is a lawyer and his wife is a housewife. They have one son. They are in the process of obtaining visas to come to the United States. Applicant has telephonic contact with his brother and sister two or three times a year. (Tr. 34; GE 2.) His parents speak to his sister and brother every week. They have returned to Pakistan once every two years and stay for a month. (Tr. 37-38.)

In 2008 Applicant and his father visited their family in a small village in Pakistan. The living conditions in that area are extremely primitive, including the lack of water and sewage. After staying with his brother and family a few days, Applicant and his father decided to purchase a house for his brother in a nearby city. Applicant along with other family members can stay in that house during visits. The house cost \$40,000 US. Applicant contributed \$25,000 to the purchase and his father paid the remaining amount. (Tr. 29-32, 36.) His father asked Applicant to contribute the money because he had the money in his savings account. (GE 3.) The last time Applicant saw these relatives was during this visit. (Tr. 22.) Applicant intends to sell the house after his brother and family come to the United States. (Tr. 30.) He would sell it now if it interferes with obtaining a security clearance. (GE 3.)

In 2010 Applicant, along with his family living in the United States, purchased a \$340,000 home in the United States. He contributed \$20,000 to the down payment of \$60-80,000. (Tr. 32.) He lives in this house with his parents, two sisters, and one brother. (Tr. 40.) Since making this purchase, Applicant has little money left in his savings account. (Tr. 44.)

Pashto is Applicant's mother tongue. He speaks several dialects of it, which are spoken in Pakistan and Afghanistan. A defense contractor is seeking to employ him because of his linguistic skills. Applicant believes he will initially work in the United States, but could be sent to the Middle East. (Tr. 46-47.)

Applicant provided no evidence concerning the quality of his professional performance or career, or the level of responsibility his duties entail. He submitted no objective character references describing his judgment, trustworthiness, integrity, or reliability.

Pakistan

I take administrative notice of the facts set forth in the Administrative Notice documents 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. Directive ¶ E3.1.15 states that, "[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 four 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;

(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.

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, 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 burden of persuasion on Applicant to demonstrate that his relationships with family members living in Pakistan do not pose a security risk. Applicant should not be placed in 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 one brother, a sister, their families, and a sister-in-law 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 by providing sensitive or classified information. AG ¶¶ 7(a) and 7(b) apply. AG ¶ 7(d) applies because Applicant's mother, although a permanent resident of the United States, is a citizen of Pakistan. Applicant invested \$25,000 in a piece of real estate in Pakistan in 2008, raising a security concern under AG ¶ 7(e).

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;

(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; 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.

AG ¶ 8(a) does not have application under the facts in this case. Applicant admitted the SOR allegations that his brother, sister, their families, and sisters-in-law are citizens and residents of Pakistan. The family's physical presence in that country creates a heightened potential for exploitation, inducement, manipulation, pressure, or coercion, as there is strong evidence of suicide bombings, and human rights abuses toward citizens and residents. That evidence makes it possible that Applicant's family interests could be threatened to the point that he would confront a choice between their interest and those of the United States should adverse forces learn of Applicant's work for the U.S. Government.

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.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States since 2003 and became a citizen in November 2012, less than two years ago. His father and four siblings are U.S. citizens. He lives with his parents, two sisters, and one brother. He has some economic ties, including a financial interest in his family's home. He has a U.S. savings account. He attended a local community college and earned degrees. He has worked in the United States since late 2003, after his arrival. He is self-employed in a part-time taxi business and full-time with a bank. He asserted a desire to use his language skills to help the United States in its endeavors in the Middle East. In sum, Applicant's has some strong connections to the United States.

AG ¶ 8(c) does not apply. After leaving Pakistan, Applicant has maintained periodic contact with his brother and sister, who are citizens and residents of Pakistan. In 2008 he visited them and their families. These contacts are sufficiently frequent, and cannot be construed to be casual.

AG ¶ 8(f) has limited application. Applicant has a \$25,000 interest in a piece of real estate in Pakistan that is a home for his brother and visiting family members. While that may not be a large amount in some instances, it was a significant amount for Applicant, who was 24 years old at the time his father requested his contribution.

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. Some mitigating evidence weighs in favor of granting Applicant a security clearance. He is an intelligent, articulate, and hardworking person, who has lived in the United States for 11 years. He has worked here since arriving in 2003 in full-time and part-time positions. He attended a local college and earned degrees. He lives with five members of his immediate family, all of whom are U.S. citizens, except his mother. Another sister is a U.S. citizen and works for the U.S. Government. He contributed \$20,000 to the purchase of a family home in the United States. Out of his sense of patriotism for the United States, Applicant would like to assist the Government's endeavors in the Middle East.

Five circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and human rights' abuses in Pakistan. More importantly for security purposes, terrorists there are hostile to the United States, engage in violence against its citizens and residents, and actively seek classified information. Terrorists and friendly governments could attempt to use Applicant's family members to obtain protected information and compromise Applicant's responsibilities to the United States. Second, Applicant had numerous connections to Pakistan before he

immigrated to the United States in 2003. He spent his formative years there and attended high school there. Third, one of his brothers and one of his sisters, along with their families, and a sister-in-law are citizens and residents of Pakistan. He maintains some contact with them. Fourth, he has been a U.S. citizen for less than two years. Fifth, he contributed \$25,000 for the purchase of a home for his brother's benefit and visiting family members. While his loyalty and connections to family members in Pakistan are positive familial traits, for security clearance purposes those connections, in addition to the heightened risk Pakistan poses to the United States, continue to outweigh the factors in favor of granting him a security clearance.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline B.

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
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Shari Dam
Administrative Judge