



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



In the matter of:)
)
) ISCR Case No. 13-01289
)
Applicant for Security Clearance)

Appearances

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

05/14/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On December 31, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on February 3, 2014, and requested a hearing before an administrative judge. The case was assigned to me on March 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 25, 2014, scheduling the hearing for May 1, 2014. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on May 9, 2014.

Procedural and Evidentiary Rulings

Department Counsel's Letter to Applicant

Department Counsel sent an informational letter to Applicant on February 27, 2014. The letter is included in the record as Hearing Exhibit (HE) I.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan. The request and the attached documents were not admitted into evidence but were included in the record as HE II. Applicant did not object, and I have taken administrative notice of the facts contained in HE II. The facts are summarized in the Findings of Fact below.

Evidence

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection.

Findings of Fact

Applicant is 53 years old. He is applying for a security clearance. He will be hired as a linguist for a defense contractor if he obtains a security clearance. He has a two-year degree from a college in Pakistan. He is married with two adult and two minor children.¹

Applicant was born in Pakistan to Pakistani parents. He came to the United States in 1988. He became a U.S. citizen in 1996. His parents are now deceased.²

Applicant's wife was born in Pakistan. They married in Pakistan in 1992. His wife remained in Pakistan for several years, and their three oldest children were born in Pakistan. His wife and three oldest children moved to the United States in 1997. Their youngest child was born in the United States. Applicant's wife and all his children are now U.S. citizens.³

Applicant has seven siblings who are citizens and residents of Pakistan. Two of his brothers retired from the Pakistani military. One of his sister's husbands also retired from the Pakistani military. Applicant has little contact with his family in Pakistan.⁴

¹ Tr. at 23, 35; GE 1-3.

² Tr. at 23-25; GE 1-3.

³ Tr. at 24, 43-44; GE 1-3; AE C.

⁴ Tr. at 25-30, 51; Applicant's response to SOR; GE 1-3.

Applicant's father-in-law and mother-in-law are citizens and residents of Pakistan. His father-in-law owns several businesses.⁵

Applicant and his siblings inherited property in Pakistan from their father. Applicant's oldest brother is the only sibling that has authority to act on the property. He is also the only sibling to live on the property. The estimated value of the property is \$70,000. Applicant receives no value from the property.⁶

Applicant bought land in Pakistan in 2006. He paid the equivalent of about \$20,000 in U.S. currency for the property. He completed a Counterintelligence-Focused Security Screening Questionnaire in March 2011. It appears that much of the questionnaire was completed by someone asking the relevant questions to Applicant and then filling in the answers for him. Applicant told the interviewer that he planned to build a vacation home on the land, and that he may retire in Pakistan.⁷

In March 2013, Applicant sold the land he bought for a vacation home. He owns two properties in the United States. He no longer has any thoughts of retiring in Pakistan. He stated that he wants to stay in the United States where his children are living. Except for the land he inherited with his siblings, he does not own any foreign assets.⁸

Applicant visited his family in Pakistan in 2005, 2010, and 2011. None of his immediate family in Pakistan has ever visited the United States. His parents-in-law have visited the United States, with their last visit in 2012.⁹

Applicant submitted several letters praising his work performance, enthusiasm, work ethic, dedication, trustworthiness, dependability, generosity, and honesty.¹⁰

Pakistan

The U.S. Department of State has defined terrorist safe havens as ungoverned, under-governed, or ill-governed physical areas where terrorist groups that constitute a threat to U.S. national security interests 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. Portions of Pakistan's Federally Administered Tribal Areas (FATA), Khyber Pakhtunkhwa (KPK) province, and Balochistan remained safe havens for terrorist groups seeking to conduct domestic,

⁵ Tr. at 30-31; Applicant's response to SOR; GE 1.

⁶ Tr. at 37-38; Applicant's response to SOR; GE 3.

⁷ Tr. at 38-40; Applicant's response to SOR; GE 2, 3.

⁸ Tr. at 41-42, 45, 48; GE 3; AE A, B, E-G.

⁹ Tr. at 31-32; GE1 .

¹⁰ AE H.

regional, and global attacks. Al-Qa'ida, the Haqqani Network, the Afghan Taliban, Lashkar e-Tayyiba, and other groups exploited the inability of Pakistan's security agencies to fully control portions of its own territory to find refuge and plan operations. Taliban senior leaders continue to be based in Pakistan, which allows them to provide strategic guidance to the insurgency without fear for their safety

Pakistan-based Lashkar-e-Tayyiba will continue to be the most multifaceted and problematic of the Pakistani militant groups. The group has the long-term potential to evolve into a permanent and even HAMAS/Hizballah-like presence in Pakistan. In 2012, Pakistan did not take significant action against Lashkar-e-Tayyiba, which continued to operate and raise funds openly in Pakistan through its political and charitable wing, Jamaat ud Dawa. The U.S. Department of State has concluded that, in 2012, Pakistan continued to experience significant terrorist violence, including sectarian attacks. The Pakistani military undertook operations against groups that conducted attacks within Pakistan, but other groups, such as Lashkar-e-Tayyiba, were able to continue to operate in Pakistan. Pakistan did not directly target the Afghan Taliban or the Haqqani Network.

The Haqqani Network, an extremist organization operating as a strategic arm of Pakistan's Inter-Services Intelligence Agency, is also operating from Pakistan with impunity. This group has staged attacks on Afghan and U.S. troops in Afghanistan (as well as civilians), including the September 13, 2011 attack on the U.S. Embassy in Kabul, Afghanistan. On September 7, 2012, the United States formally declared the Haqqani Network a foreign terrorist organization.

On May 1, 2011, U.S. special forces personnel raided a large al-Qa'ida compound located in Pakistan and shot and killed al-Qa'ida leader Osama bin Laden. In announcing bin Laden's death, senior administration officials characterized him as a "sworn enemy of the United States and a danger to all humanity; a man who called for the murder of any American anywhere on Earth," who designated the United States as al-Qa'ida's "primary target," and who was responsible for killing thousands of innocent men and women not only on 9/11, but in the 1998 East Africa embassy bombing, the attack on the USS COLE, and many other acts of brutality." That he was found in a residential neighborhood of Pakistan, in a compound that was "roughly eight times larger than other homes in the area with 12-to-18 foot walls topped with barbed wire" and other "extremely elaborate" physical and operational security measures, highlights the U.S. concern that terrorists, militants, and insurgents find safe havens in areas of Pakistan.

The State Department warns U.S. citizens to defer all non-essential travel to Pakistan, as the presence of several foreign and indigenous terrorist groups poses a potential danger to U.S. citizens throughout Pakistan. In 2012, Pakistan experienced numerous bomb blasts, suicide attacks, and sectarian violence resulting in the deaths of more than 2,000 civilians and 680 security forces personnel. Attacks targeting civilians and security personnel occurred across all provinces. These included attacks against U.S. citizens and other Western interests, U.S. Government vehicle convoys, U.S. personnel, and Pakistani government authorities. In 2011, the Governor of Punjab and

the Pakistani Federal Minister for Minority Affairs were assassinated in two different attacks. Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Suicide bombings and attacks occur throughout Pakistan on a regular basis. Also, several American citizens throughout Pakistan have been kidnapped.

Major human rights problems in Pakistan include extrajudicial killings, torture, and disappearances committed by security forces, as well as by militant, terrorist, and extremist groups, affecting thousands of civilians in all areas of the country. Additional problems include poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in persons. Military and terrorist operations in all four provinces and in FATA resulted in hundreds of deaths and thousands of injuries.

The Pakistani government maintains several domestic intelligence services that monitored politicians, political activists, suspected terrorists, and the media. Credible reports indicated that authorities routinely used wiretaps and intercepted and opened mail without the requisite court approval, as well as monitoring mobile phones and electronic correspondence.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

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

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

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

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

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

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

I considered the totality of Applicant's family ties to Pakistan. Guideline B is not limited to countries hostile to the United States:

The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether

that person, organization, or country has interests inimical to those of the United States.¹¹

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in 1988. He became a U.S. citizen in 1996. Three of his children were born in Pakistan. His wife and three oldest children moved to the United States in 1997. Applicant's wife and all their children are now U.S. citizens. He owns two properties in the United States. The land that he inherited holds little value to him and his wife. He sold the land that he bought in 2006. AG ¶ 8(f) is applicable to his foreign financial interests, which are alleged in SOR ¶¶ 1.c and 1.d.

However, Applicant has many family members in Pakistan, including several who are retired from the Pakistani military. He may currently have little contact with his family in Pakistan, but he is not estranged from them as evidenced by his visits to Pakistan in 2005, 2010, and 2011, and his in-laws' visits to the United States. Applicant now states that he has no plans to live in Pakistan, but in his Counterintelligence-Focused Security Screening Questionnaire in March 2011, he told an interviewer that he planned to build a vacation home on the land that he bought in Pakistan, and that he may retire in Pakistan. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." Because of Applicant's close family ties to Pakistan, I am unable to find any of the mitigating conditions to be fully applicable to his foreign family members.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. He is a loyal U.S. citizen who is seeking to aid this country as a linguist. However, he was unable to mitigate the considerable security concerns raised by his family in Pakistan.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated foreign influence 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	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.

Edward W. Loughran
Administrative Judge