



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



In the matter of:)
)
) ISCR Case No. 14-00967
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

10/30/2014

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 11, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 24, 2014, detailing security concerns under Guideline B, foreign influence, and Guideline F, financial considerations. The action was taken under Executive Order 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on May 2, 2014. He submitted a notarized, written response to the SOR allegations dated May 12, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on August 28, 2014. Applicant received the FORM on September 5, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response, with attachments, dated October 1, 2014. DOHA assigned this case to me on October 20, 2014. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 4, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Pakistan. The request is not admitted into evidence, but is included in the record as Hearing Exhibit (HE) 1. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.f and 2.b-2.f of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 2.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 39 years old, was born and raised in Pakistan. He graduated from a Pakistani high school and a university with a degree in electrical engineering. He emigrated to the United States in December 1999 on a student visa. He graduated from a U.S. university in 2001 with a master's degree in computer information systems. He received a second master's degree in telecommunications from another U.S. university in 2006. He continues to upgrade his technology skills through various network certificate programs.¹

In 2001, Applicant obtained work in the United States and a H-1B worker's visa. He obtained his permanent residency (green card) and became a naturalized United States citizen in 2013. Applicant and his wife married in July 2004. She is a permanent resident (green card) of the United States, who will be eligible for U.S. citizenship in 2015. She currently attends a U.S. university, where she is studying for a doctorate

¹Item 5; Response to FORM - personal essay.

degree. They have a 9-year-old son, who was born in the United States and resides in the United States.²

Applicant's father, mother, two brothers, one sister, father-in-law, and mother-in-law are citizens and residents of Pakistan. One sister is a citizen of Pakistan, residing in Saudi Arabia. This sister resigned her position as the deputy director of a Pakistani government agency when she moved to Saudi Arabia. Applicant's father works as an accounting and finance advisor, Chief Financial Officer, to the board of directors of large industrial company. His mother is a house wife. His parents have applied for permanent U.S. residency. One brother is a certified financial analyst, who works as an investment manager for a private investment foundation in Pakistan. The foundation is a corporation established as a charitable trust for the welfare of former Pakistani serviceman and their dependents. This brother has applied for permanent residency in Canada in the Federal Skilled Worker class, and Canada has approved the processing of his application. Applicant's other brother is a team leader and network and systems administrator for a private Pakistani telecommunications company. His youngest sister does not work and lives with his parents. His father-in-law is retired and his mother-in-law does not work outside the home.³

Applicant talks with his parents, mostly his mother, about once a month. He talks with his brothers and sister when he calls his parents. He occasionally talks with his in-laws. Over a 15-year period of time, Applicant sent approximately \$10,000 to his family members as birthday and holiday gifts. He did not provide financial support to his family members as his family members are financially independent. His family members are not employed by the Pakistani government or involved in political parties or movements. They comply with the laws of Pakistan and the United States.⁴

Applicant traveled to Pakistan twice in 2004 and 2007. He also traveled to Pakistan in 2006, 2008, and 2010. He traveled to Canada in 2011. He traveled to Pakistan for family weddings and to visit family members.⁵

Applicant is involved in community activities, such as feeding the homeless and mentoring individuals, in the United States. Since becoming a United States citizen, he cast his first vote, an activity he did not do in Pakistan. He plays softball and golf in his spare time.⁶

²Item 5; Response to FORM - personal essay.

³Item 4; Response to FORM.

⁴Item 4; Response to FORM.

⁵Item 5.

⁶Response to FORM.

Applicant and his wife purchased a new house in 2005. He used credit cards to pay the down payment. He refinanced the mortgage on the house in 2007 and used money from the refinance to pay the balances on a few of his high balance credit cards. He did not pay all his credit card debts. In July 2009, Applicant was laid off from his job. He did not have an any savings and was unable to pay his mortgage or credit card debts. He returned to work in November 2009.⁷

When his financial problems began, Applicant contacted the holders of his credit cards and his mortgage and requested assistance. His mortgage company reduced his interest, which enabled him to continue paying his mortgage. He is current on his mortgage. The credit card companies raised his interest rates after he stopped making his payments.⁸

Applicant contacted the six creditors listed in the SOR in 2013 and began negotiating a resolution of his debts. He negotiated a reduced payment on the \$2,784 debt identified in SOR allegation 1.a. He provided documentation, which shows that this debt has a zero balance. He disputed the \$29,750 (SOR allegation 1.c) with the collection agency which purchased the debt from a bank. The collection agency notified him by letter dated July 24, 2014 that it had investigated his dispute, that it was closing this account, and that it would be reported to the credit reporting agencies. This debt has been deleted from his credit report. The two debts in SOR allegations 1.a and 1.c are resolved.⁹

In his response to the SOR, Applicant provided information about his debts, showing the results of his efforts to negotiate a resolution of his debts. He indicated that he had resolved the \$30,481 debt in SOR allegation 1.b for \$7,630, which had to be paid by July 31, 2014. He did not provide any proof of this payment. He has not provided documentation that he had reached a conclusive settlement offer on the debts in SOR allegations 1.d (\$18,900), 1.e (\$5,035), and 1.f (\$7,909) or paid these debts.¹⁰

Since 2009, Applicant advises that he had changed his spending habits. He does not live in his large townhouse.¹¹ Instead, he rented a smaller condo. More recently, he moved to a smaller residence for \$1,950, which reduced his monthly rental expense by \$250 and his utility expense by an unknown amount. He and his wife own a 2007 Honda and 1999 Chevy Prizm, which are debt free. He and his wife moved their son from

⁷Item 5.

⁸Item 5.

⁹Response to FORM.

¹⁰Item 4; Response to FORM.

¹¹The September 28, 2013 and the April 7, 2014 credit reports reflect that Applicant continues to pay his mortgage on this property, so it is assumed that he rents this property. He has not provided information on how he pays the monthly mortgage or the amount he receives for rental income. Items 6 and 7.

private school to public school and use public transportation. He last traveled to Pakistan in 2010 because the trips are expensive.¹²

Applicant's wife receives \$1,800 a month in a stipend while working on her doctorate. Applicant's monthly income is unknown as are his monthly expenses. Applicant has not explained how nor has he shown that he has sufficient income to pay any taxes he may incur as a result of his negotiated settlements.¹³

I take administrative notice of the following facts. Pakistan is an Islamic parliamentary democracy with a poor human rights record. The United States' relationship with Pakistan has strengthened since September 11, 2001. Pakistan remains a principal ally of the United States on the war on terrorism and has actively cooperated with the United States in the global war on terrorism. Despite this, terrorist groups, such as the Taliban and al-Qaida, operate in Pakistan, making safety and security an issue. These terrorist organizations target not only Pakistani interests, but United States and Afghan interests by suicide operations, bombings, assassinations, car-jacking, assaults, or hostage taking. The Pakistan Army, with United States support, recently increased its efforts to contain and eliminate terrorists operations within its borders.¹⁴ At this time, the risk of terrorist activities remain extremely high, especially in the NWFP province and Northwestern Pakistan, which borders Afghanistan. Political violence remains a problem in Karachi.

Pakistan is not on the National Counter Intelligence Center's list of most active nations engaging in foreign economic collection and industrial espionage. It is not known to be an active collector of United States intelligence information, nor is it known to target its expatriates or former citizens to obtain United States information. The United States provides substantial financial aid to Pakistan.¹⁵

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 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 the adjudicative process. The administrative judge's overarching

¹²Item 4; Response to FORM.

¹³Response to FORM.

¹⁴Response to FORM.

¹⁵Hearing Exhibit 1.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

- (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; and
- (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.

Applicant's wife is a permanent resident of and living in the United States. His son is citizen and resident of the United States. Thus, no security concern is raised by these family members. Applicant's parents, father-in-law, mother-in-law, two brothers, and one sister are citizens and residents of Pakistan. His second sister is a citizen of Pakistan, residing in Saudi Arabia. Applicant maintains a normal familial relationship with his family members in Pakistan. He talks with them by telephone about once a month. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance.

In determining if security risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Pakistani Government and of terrorist organizations in Pakistan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Pakistani and the Pakistani government create a heightened risk and a security concern because of the ongoing terrorist activities in Pakistan and the poor human rights record in Pakistan. There is no evidence that the Pakistan government engages in espionage activities in the United States or targets American-Pakistan citizens by exploiting, manipulating, pressuring, or coercing them to obtain protected information.¹⁶

¹⁶ The Government has not raised a concern about Saudi Arabia.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Pakistan cause security concerns, I considered that Pakistan and the United States have a close working relationship in the war on terrorism. However, terrorists still occupy parts of Pakistan and continue to conduct activities from their location. The human rights issues in Pakistan continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Pakistan. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a), 7(b) and 7(c).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and 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.; and

(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.

Applicant's family members work in private industry. His father and one brother work to assure that the finances of these companies are solid. This brother is seeking to move to Canada and has started the process to emigrate. His parents are seeking permanent U.S. residency. His other brother works in telecommunications. At the present time, neither of his sisters work nor does his mother. His father-in-law is retired, and his mother-in-law is a homemaker. His family members are not politically active and live quietly. Their jobs do not place them in the public eye, which would make them possible targets of terrorists. There is little likelihood Applicant's family members work and activities in Pakistan would place him in a position of having to choose between the interests of the United States and the interests of a foreign individual, group, organization, or government. Likewise, Applicant's family contacts do not create a conflict of interest because his loyalties are with the United States. He has mitigated the security concerns under AG ¶¶ 8(a) and 8(b).

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had extensive credit card debt, which he managed until 2009. He lost his job in July 2009, which created excessive unpaid debts and his current financial problems. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

When Applicant lost his job in 2009, he was unable to pay his mortgage and credit card bills. He negotiated a reduction in his mortgage interest rate, which enabled him to resume paying his mortgage. He was unsuccessful in reducing his payments on his credit cards. Since 2009, Applicant has reduced his living expenses, relied upon older, debt-free cars and public transportation, and moved his son from private school to public school. Applicant acted reasonably by taking steps to reduce his living expenses. AG ¶ 20(b) is partially applicable because he waited until 2013 or later to contact the creditors about his debts.

Applicant contacted his creditors in an effort to resolve his debts. He reached an agreement with one creditor and paid the agreed upon settlement offer. He has not reached a settlement agreement and paid the debts in SOR allegations 1.b and 1.d-1.f AG ¶ 20(d) applies to SOR allegation 1.a.

Applicant disputed the debt in SOR allegation 1.c. As a result of his dispute, the creditor closed its account and deleted the account from his credit report. AG ¶ 20(e) applies to SOR allegation 1.c.

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 an 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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.¹⁷ Except for

¹⁷In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd.

Paragraph 2, Guideline F:

AGAINST APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

Against Applicant

Subparagraph 2.c:

For Applicant

Subparagraphs 2.d-2.f:

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.

MARY E. HENRY
Administrative Judge