



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



In the matter of:)
)
) ISCR Case No. 14-01174
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, and testimony, I conclude that Applicant provided sufficient information to mitigate security concerns under Guideline B for foreign influence and Guideline C for foreign preference. Eligibility for access to classified information is granted.

Statement of the Case

On November 5, 2013, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. Applicant was interviewed by a security investigator for the Office of Personnel Management (OPM). After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On May 1, 2014, the DOD issued to Applicant a Statement of Reasons (SOR) detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 in the DOD on September 1, 2006.

Applicant answered the SOR in an undated response. He admitted the four factual allegations under Guideline B, but denied the one allegation under Guideline C. Department Counsel was ready to proceed on August 28, 2014, and the case was assigned to me on September 2, 2014. The Defense Office of Hearings and Appeals (DOHA) sent to Applicant a Notice of Hearing on September 9, 2014, for a hearing scheduled for September 24, 2014. I convened the hearing as scheduled. The Government introduced two exhibits I marked and admitted into the record without objection as Government Exhibits (GX) 1 and 2. The Government also requested that I take administrative notice of certain facts concerning Pakistan. The facts administratively noticed will be in my Findings of Fact. (Hearing Exhibit (HE) I) Applicant testified, and introduced seven exhibits I marked and admitted into the record without objection as Applicant Exhibits (AX) A through G. DOHA received the transcript of the hearing on September 30, 2014.

Findings of Fact

After thoroughly reviewing the case file, the testimony, and the exhibits, I make the following findings of fact.

Applicant is 37 years old. He was born in Pakistan and received his bachelor's degree in computer science from a college in Pakistan in 2000. He worked for a bank in Pakistan until the fall of 2002 when he came to the United States to further his education. He received both master's and doctor's degrees in computer science from a university in the United States in 2006. While in school in the United States, he also worked as a graduate assistant. He visited his family in Pakistan in December 2010 when his father passed away. He visited again in December 2012. He has not returned to Pakistan since becoming a U.S. citizen in October 2013. He does not intend to visit Pakistan once his family has moved to the United States. At one time when he worked for the bank in Pakistan, Applicant had an account in the bank for deposit of his salary. The account may still exist but there are no funds in the account. Applicant has no assets or financial interests in Pakistan. All of his assets and financial interests are in the United States.

Applicant knew his wife in Pakistan. They married in 2003 and she moved to the United States to live with Applicant. They have a six-year-old daughter. Applicant and his wife both became United States citizens in October 2013. His wife graduated from college in May 2014 with a degree in interior design. She is seeking employment in her field in the United States. (Tr. 49-55, 61-67)

Under Guideline B, the SOR alleges that Applicant's mother, mother-in-law, and father-in-law are citizens and residents of Pakistan. The SOR also alleges that Applicant's brother is a citizen of Pakistan but a resident of Bahrain. Under Guideline C,

the SOR alleges that Applicant possesses a Pakistani passport issued in August 2009 that is due to expire in August 2014.

Applicant had a Pakistani passport to enter the United States in 2002. His passport was renewed in August 2009, and was to expire in August 2014. Applicant and his wife became United States citizens and received their U.S. passports in October 2013. Immediately after becoming a U.S. citizen and receiving his U.S. passport, Applicant applied on October 22, 2013, to the Pakistan Embassy in Washington, D.C. to renounce his Pakistani citizenship and return his Pakistani passport and identity card. His application to renounce Pakistani citizenship was approved in February 2014. Applicant presented documentation from the Pakistan Embassy that he renounced his Pakistan citizenship and relinquished to them his Pakistani passport and identity card. Applicant also presented a highlighted copy of his testimony to the OPM security investigator that he renounced his Pakistani citizenship and surrendered his Pakistani passport. Applicant is no longer a Pakistani citizen and does not possess a current Pakistani passport or identity card. His wife has not applied to renounce her Pakistani citizenship, and she is a dual citizen of Pakistan and the United States. She has a current Pakistani passport. (Tr. 28-32, AX A, Certificate of Renunciation of Pakistan Citizenship, dated February 3, 2014; AX B, Testimonies, dated January 9, 2014; AX G, Declaration of Renunciation of Citizenship, Receipts, and Payment of Fees)

Applicant admits his mother is a citizen and resident of Pakistan. She is a homemaker. Applicant's father worked for a Pakistan airline but passed away in December 2010. His mother receives a pension from the airline company. Applicant's mother has visited Applicant and his family a number of times in the United States. Applicant submitted a Petition for Alien Relative for his mother to the United States Customs and Immigration Service. The request was approved on April 15, 2014. Since the petition has been approved, his mother's intention is to move permanently to the United States. She has not yet moved since she is in the process of disposing of the house she owns in Pakistan. Applicant may have an interest in the house as an inheritance from his mother. He speaks to his mother weekly by phone. He does not provide her any monetary support. (Tr. 42-46; AX C, Petition for Alien Relative, dated October 1, 2014; AX D, Petition Approval, dated April 15, 2014)

Applicant admits his brother is a Pakistan citizen but a resident of Bahrain. Applicant's brother works for a U.S. company in Bahrain as an auditor and accountant. His brother is married with one child. His wife and child are also Pakistan citizens residing in Bahrain. Applicant submitted a Petition for Alien Relative for his brother and his family on February 4, 2014. The petition for a sibling requires additional documentation that Applicant's brother had to gather before Applicant could submit his brother's application. The petition is pending approval. Applicant's brother's intention is for him and his family to move to the United States as soon as the petition is approved. Applicant's brother anticipates employment with his present U.S. company employer in the United States. (Tr. 29-33, 40-49; AX E, Petition for Alien Relative, dated February 4, 2014)

Applicant admits that his wife's parents are citizens and residents of Pakistan. His father-in-law is a retired employee of the Pakistan government. He worked for the Pakistan government building houses for poor people. After retiring from the Pakistan Government, he started his own housing construction business. He receives a pension from the Pakistan Government. Applicant's mother-in-law is a homemaker. Applicant's wife speaks to her parents by phone at least weekly. Applicant only talks to them on rare special occasions. Her parents have visited them in the United States a number of times. His mother-in-law visits for approximately a month at a time. His father-in-law stays only approximately two weeks at a time since he is working. They stay with Applicant's family while in the United States. Applicant's wife and daughter visit Pakistan about once a year for approximately a month. They stay with her parents while in Pakistan. She may see other relatives while in Pakistan if they visit her parents. His wife and daughter last visited Pakistan in the summer 2014. Applicant's wife submitted a Petition for Alien Relative for her parents on October 31, 2014. Only an offspring can submit a petition for a parent, so Applicant's wife had to submit the petition for her parents. The petition is pending approval. Applicant's in-law's intention is to move to the United States when the petition is approved. (Tr. 34-40; AX F, Petition for Alien Relative, dated October 31, 2013)

While not alleged as a security concern, it is noted that Applicant's wife has a sister who is a citizen and resident of Pakistan. She is a fashion designer, has a child, and is married to a telecommunication worker. Neither Applicant's wife's sister nor her husband work for the Pakistan Government. They have never visited the United States. Applicant's wife talks to her sister by phone approximately once a month. (Tr. 33-34)

Applicant came to the United States for the same reasons many immigrants before him came to the United States. The United States offers freedom and opportunity. He is bringing his family to the United States for the same reasons. As he stated:

So the idea is that the United States gives a lot of opportunity, and it's a very a good country. I mean, you can stay over here with freedom. In Pakistan, you hear the news. We are also tired of that. We want to move over here and live a peaceful life. (Tr. 40)

Pakistan and India were British colonies until after World War II. In 1947, India and Pakistan were granted independence by Great Britain. Pakistan today has a parliamentary form of federal government with a population of over 170 million, almost all of which are Muslims. The country has very low income, half the population is illiterate, and the life expectancy is only 64 years. Pakistan has the eighth largest armed forces in the world. It is well trained and disciplined. However because of budget cuts, the armed forces have not been able to maintain their equipment as needed. Pakistan is one of the world's nuclear powers.

There are extensive terrorist activities in Pakistan. Pakistan was one of only three countries to recognize the Taliban regime in its neighbor Afghanistan. However, after

September 11, 2001, Pakistan reassessed its relationships with the Taliban and pledged support for the United States and international efforts to remove the Taliban from power. However, the Taliban is known to be active in parts of Pakistan especially along the Afghan and Iranian borders. Financial resources from Pakistan have permitted the Taliban in Afghanistan to exist and gain strength. Al Qaida is believed to be headquartered in the border areas between Afghanistan and Pakistan. Pakistan's Army tried to control this area but met with major resistance. The United States considers these terrorist safe areas as ungoverned. The terrorists pose a threat to United States national security because of their ability to organize, plan, raise funds, and recruit, train and operate in the area. The State Department warns United States citizens to curtail non-essential travel to Pakistan because of the terrorist threats. Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Pakistan's human rights situation and record are poor.

Pakistan and the United States established diplomatic relationships in 1947 and the United States provided economic and military assistance to Pakistan. The Soviet invasion of Afghanistan in 1979 highlighted the common interests of the United States and Pakistan. They agreed to a large economic and military assistance program. However, there continues to be incidents of violence against American interests. Since September 2001, Pakistan provided extensive assistance in the war on terror and the United States stepped up its economic assistance. In 2004, the United States recognized Pakistan as a major non-NATO ally. The United States sold fighter aircraft to Pakistan thereby deepening their strategic relationship. The United States and Pakistan strategic partnership is based on the shared interests of the United States and Pakistan in building stable and sustainable democracy, and in promoting peace, stability, prosperity, and democracy in South Asia and across the globe. However, in recent years, this relationship has become very strained. (Hearing Exhibit I)

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 must be considered 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 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The 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 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.

Analysis

Guideline B: 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 the U.S. interest, 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 consideration 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 ¶ 6)

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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. 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 and its relationship with the United States 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 or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

The SOR alleges, and Applicant admits, that Applicant's mother and in-laws are citizens and residents of Pakistan. His brother is a citizen of Pakistan but a resident of Bahrain. There is no evidence that the family members have strong ties to the Pakistan Government. At one time, Applicant had a Pakistan bank account, and he may have some inheritance rights to his mother's Pakistan house. The family members in Pakistan, the potential to inherit from his mother's house, and the potential bank account are a foreign influence security concern for Applicant.

I considered the following foreign influence disqualifying conditions under AG ¶ 7 as relevant to the security concerns raised in the SOR:

- (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.

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not in a position to be exploited. The Appeal Board consistently applied this mitigating condition narrowly, holding that an applicant should not be placed in a position where he or she is forced to make a choice between the interests of the family member and the interests of the United States. Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 7(d) applies because Applicant's wife is a dual citizen of the United States and Pakistan and has frequent contact with her family in Pakistan. The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. AG ¶¶ 7(a) and 7(d) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. One factor that may heighten the risk in Applicant's case is the terrorist activities in Pakistan and the strained relations between Pakistan and the United States. The Government has established that Applicant was under a "heightened risk" of security concern because of these circumstances. An applicant with foreign family ties to a country that presents a heightened risk has a heavy burden of persuasion to show that neither he nor the family members are subject to influence by that country. The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. There is a risk presented because Applicant's mother, brother, and in-laws are citizens, and some are residents of Pakistan.

Applicant raised facts to mitigate the security concerns. I have considered the following foreign influence mitigating conditions under AG ¶ 8:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign 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 or 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 have considered Applicant's relationship with his family members in Pakistan. His family members are ordinary citizens and do not and have not had significant government positions in Pakistan. Immediately after become citizens of the United

States, Applicant and his wife filed Petitions for Alien Relatives for his mother, brother, and in-laws. The petition for his mother has been approved while the petitions for his brother and in-laws are pending. The intent of Applicant's family members in Pakistan is to move to the United States as soon as the Petitions for Alien Relatives are approved and all details of their move to the United States are finalized. However because they are still in Pakistan, it cannot be said that it is unlikely Applicant will be placed in a position of having to choose between his wife's family members and the interests of the United States. AG ¶ 8(a) does not apply.

There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. There is also a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. Factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant's family circumstances post a security concern. Applicant himself has continued contact with his mother and brother. He has limited contacts with his mother-in-law and father-in-law. He does not speak to them often even though they have been to the United States to visit Applicant and his family. Applicant's wife is in frequent and constant contact with her family members in Pakistan. She talks to and visits them frequently. Thus the communication network between Applicant, his wife, and this wife's family is not casual or infrequent and it could create a risk for foreign influence or exploitation. Applicant has not rebutted the presumption that the family contacts are casual and frequent, so AG ¶ 8(c) does not apply.

Applicant has strong ties to the United States. Like many immigrants before him, he came to the United States for a better life and more opportunities. He wanted to escape the chaos and depression in his native country. For the same reasons, he has taken steps to bring his immediate family to the United States. He has been in the United States for over 12 years. He became a United States citizen and immediately renounced his Pakistan citizenship and turned in his Pakistan passport. This is an indication of his deep feelings of loyalty to the United States. His wife and child are United States citizens. Applicant has financial and property interests only in the United States. After becoming a citizen, he took steps to move his family members from Pakistan to the United States. This is again an indication that he has no loyalty to Pakistan. He has no obligation to Pakistan and no interests in Pakistan. AG ¶ 8(b) applies.

As noted above, all of Applicant's financial and property interests are in the United States. Applicant may have a bank account in Pakistan but there are no funds in the account. He does not have a substantial financial interest in his mother's house in Pakistan. He has no financial or business interests in Pakistan. AG ¶ 8(f) applies.

Applicant has met his heavy burden to show that his family members and his wife's family members in Pakistan are not in a position to be a security concern. I conclude that Applicant has mitigated security concerns for foreign influence.

Guideline C, Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant had a Pakistan passport until he became a United States citizen in October 2013. He provided substantial evidence that he turned in his Pakistan passport and renounced his Pakistan citizenship. He no longer possesses a current Pakistan passport. There is no evidence he exercised any right or privilege of Pakistan citizenship since becoming a United States citizen. These facts do not raise the foreign preference disqualifying conditions in AG ¶ 10(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; (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; and (4) residence in a foreign country to meet citizen requirements).

Since a disqualifying condition is not raised, I did not address in detail the foreign preference mitigating conditions under AG ¶ 11. However, I will note that the evidence presented by Applicant does substantiate the mitigated condition at AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated).

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 the 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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant's family and in-laws in Pakistan do not create a risk of foreign influence leading to vulnerability, pressure, or coercion. Applicant has renounced his Pakistan citizenship, turned in his Pakistan passport, and has taken the appropriate and immediate steps to bring his relatives in Pakistan to the United States. While access to classified information is not based on a finding of loyalty in the United States, Applicant has established his loyalty to the United States. His sense of loyalty to Pakistan is minimal at best. He established his deep and longstanding relationships and loyalties to the U.S. He can be expected to resolve any conflicts concerning his relatives in Pakistan in favor of the United States. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated his foreign preference for Pakistan and any foreign influence security concerns arising from his relatives and family in Pakistan. Eligibility for access to classified information is granted.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge