



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-01896 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/10/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On October 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 29, 2014. A notice of hearing was issued on January 20, 2015, scheduling the hearing for February 19, 2015. Government Exhibit (GX) 1 was admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A through G, which were admitted without objection. The transcript was received on March 2, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Pakistan. The request and the attached documents are included in the record as HE I. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.b and 1.d, with explanations. He denied the remaining allegations.¹

Applicant was born in Pakistan in March 1983. While in Pakistan, he attended high school. He did not serve in the military. He immigrated to the United States in December 2000 with his family. (Tr. 18) Applicant became a naturalized citizen in 2008. (AX D) Applicant has a United States passport. He obtained his undergraduate degree from an American university in 2011. Applicant has been employed with his current employer, as a system administrator, since 2013. (GX 1) This is his first request for a security clearance with the DOD.

The SOR alleges foreign influence security concerns because of Applicant's parents, spouse, brothers and in-laws. All reside in the United States except his mother-in-law and father-in-law.

Applicant's marriage is an arranged one. He married his wife in Pakistan in 2014. She now resides with him in the United States. She has been a resident of the United States since April 6, 2014. She is in the process of becoming a U.S. citizen. (AX C) Applicant and his wife have no children.

Applicant's parents are citizens of Pakistan but reside with him in the United States. His mother is a housewife and his father is retired due to a disability. (AX E) His parents have no connection with the Pakistani government or military. They have lived in the United States for 15 years and have no intention of returning to Pakistan. (Tr. 29)

Applicant has two brothers. One brother is a naturalized U.S. citizen and has lived in the United States since 2000. His other brother has also lived in the United States since 2000, but is in the process of becoming a U.S. citizen. (Tr. 11) Neither brother served in the Pakistani military.

Applicant's in-laws are citizens and residents of Pakistan. He met them in 2012 when he became engaged to his wife. His wife hopes that they will come to live in the United States. At the present time, Applicant's wife talks to her parents on the phone once a week. Applicant is usually at work when she calls. Applicant rarely speaks to his

¹Applicant presented an amended answer to the SOR to reflect the fact that his wife now resides in the United States.

father-in-law or mother-in-law. (Tr. 31) Applicant does not provide them with any financial support. (Tr. 41)

Applicant has other relatives who live in the United States. He has aunts and uncles. He noted that most of them were U.S. citizens. None of his mother's family remains in Pakistan. (Tr. 19) He does not have any contact with any blood relatives in Pakistan. (Tr. 19) Applicant does not maintain contact with any extended family members in Pakistan. Nor does he maintain any contact with friends in Pakistan.

Applicant and his wife purchased a home in the United States. He believes the value of the home is approximately \$221,000. (Tr. 48) He has a car and bank savings accounts. He earns approximately \$75,000 annually. (Tr. 49) Applicant has no assets or property in Pakistan. He has a 401(k) and is financially stable.

Applicant submitted eight letters of recommendation from various managers and coworkers. Each attests to his leadership skills, dependability, and ethics. His current manager states that Applicant is greatly respected within the program. He is knowledgeable and has held positions of trust which allowed him access to sensitive information. Applicant's judgment and decisions are in line with company and program policies. (AX B) He would work to resolve any issues of conflict with his employers.

Applicant is a respected member of the community. He is a law-abiding citizen. He respects his neighbors and fellow community members. Applicant is a hard-working individual who strives to excel in life on a personal and professional basis. (AX B)

Applicant's friend, who also holds a security clearance, has known him for more than seven years. He trusts him to respect the privacy of confidential work, information, rules and restrictions. He also knows Applicant as an active and upstanding member of the community. Applicant is a family man. (AX B)

The Executive Vice-President of Applicant's company has known Applicant since September 2013. He applauds Applicant for the multiple certifications that he has earned. Applicant works closely with the accounting and human resources department for their IT needs. He is cognizant of the data and complies with the corporate policies regarding confidentiality and safeguarding sensitive information.

Applicant emphasized that his parents are honest people who taught him to be honest and to work hard. Applicant has worked in many jobs that did not employ his complete skills, but he continued to be promoted and has worked very hard and gained many promotions. He also pursued his studies while working full-time.

Applicant was credible when he stated that the United States is his home. This is where he wants to live for the rest of his life with his wife and family. (Tr. 57) He has been working in the industry for more than six years. He obtained various certifications. (AX G) He enjoys his work and wants to provide a service to the U.S. Government.

Administrative Notice

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Pakistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al Qaida operate in Pakistan, and in some instances elements of the Pakistan government may be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 it was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Pakistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghanistan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al Qaida exploits the permissive operating environment to support the Afghanistan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Pakistan Taliban and other extremist groups, Al Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistan civilians and security personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistan Government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail, phones, and electronic messages without the requisite court approval. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of

Pakistan's development of nuclear weapons, the United States cut off military aid to Pakistan for several years.

After September 11, 2001, Pakistan became allied with the United States in counterterrorism. Pakistan committed to elimination of terrorist camps on the Afghanistan-Pakistan border and sent thousands of troops to the region and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

On May 1, 2011, U.S. special operations personnel raided a large compound in Pakistan and killed Osama bin Laden, the leader of al Qaida. The raid raised concerns that the Pakistan government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

As of August 2014, the U.S. State Department continued to warn 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.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b).

Applicant’s mother-in-law and father-in-law are citizens and residents of Pakistan. Applicant’s wife maintains contact with them. One of Applicant’s brothers lives in the United States but is a citizen of Pakistan. Security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his extended family. Based on this evidence, AG ¶¶ 7(a) and 7(b) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, 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, or the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

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 in-laws living in Pakistan, nevertheless, it is not possible 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 a significant problem with terrorism. Applicant's relationship with his wife and her parents in Pakistan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist family members in those countries by providing sensitive information.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG ¶ 8(b) can mitigate concerns when "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." AG ¶ 8(c) can mitigate if "contact of 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."

AG ¶ 8(a) and 8(c) have applicability. Applicant's parents, wife, and brothers reside in the United States. Most are U.S. citizens. He does not keep in touch with his in-laws on a regular basis, but his wife calls her family each week. He has shown mitigation under AG ¶ 8(a), and Applicant met his burden of showing there is "little likelihood that [his relationships with relatives living in Pakistan] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. He has lived in the United States since 2000. He married his spouse in 2014. She is in the process of becoming a U.S. citizen. He is a family man who wants to provide for his family in the United States. When Applicant took an oath and swore allegiance to the United States when he became a naturalized U.S. citizen, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his wife's family living in Pakistan. He rarely communicates with them. Moreover, there is no evidence, however, that terrorists, criminals, the Pakistan government or those conducting espionage have approached or threatened Applicant, or his family members. As such, there is a

reduced possibility that either Applicant or his in-laws living in Pakistan would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Pakistan is from terrorists and other lawless elements and not the Pakistan Government.

In sum, Applicant's connections to his wife and her parents living in Pakistan are significant. Still, he has not been to Pakistan since his wedding. Applicant's connections to the United States are strong. He has no desire to return to Pakistan. He is committed to his personal and professional life in the United States. His wife now lives with him in the United States. There is substantial mitigation in this case. Applicant spoke about his undivided loyalty to the United States. His connections to the United States heavily outweigh his connections to his family in Pakistan. He has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated under Guideline B. Even if security concerns are not mitigated under Guideline B, they are mitigated under the whole-person concept, *infra*.

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 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a naturalized U.S. citizen. He is an educated man, who lives with his wife and parents in the United States. His immediate family resides in the United States with him. His financial assets are in the United States. Applicant has strong personal and professional ties to the United States.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation and dangers there. The country is dangerous because of violence

from terrorists and other lawless elements. Terrorists continue to threaten Pakistan, the interests of the United States, and those who cooperate and assist the United States. Pakistan does not fully comply with the rule of law or protect civil liberties in many instances. Still, the United States and Pakistan remain allies in the war on terrorism. Pakistan and the United States have close relationships in diplomacy and trade. They also have profound policy disputes.

Applicant's in-laws are citizens and residents of Pakistan. His connections to his wife's family in Pakistan make Applicant more vulnerable as a target of coercion by lawless elements in Pakistan. His in-laws in Pakistan will be at a greater risk if his clearance is granted. However, they have no knowledge of Applicant's work. More importantly, his primary duty is to his own wife and his parents who are U.S. citizens. He has no intention of returning to Pakistan, and he will seek advice to resolve any issues that may arise in the future with the help of his employer. For all these reasons, Applicant has mitigated the security concerns under foreign influence.

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:

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| Paragraph 1, Guideline B: | FOR APPLICANT |
| Subparagraphs 1.a-1.d: | 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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge