



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-06760
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

03/01/2016

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on July 11, 2014. On July 16, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. 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) implemented within the Department of Defense on September 1, 2006.

On August 28, 2015, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 30, 2015. Another administrative judge was assigned the case on October 28, 2015. On December 9, 2015, a Notice of Hearing was issued, scheduling the hearing for January 21, 2016. The case was transferred to me on January 12, 2016. The hearing was held as scheduled. During the hearing, the Government offered one exhibit which was admitted without objection as Government (Gov) Exhibit 1. Applicant offered one exhibit which was admitted as Applicant Exhibit (AE) A, without objection. The Government requested administrative notice be taken of certain facts regarding the country of Pakistan. The administrative notice document was marked as Administrative

Notice Document (Admin Not) 1. Applicant did not object to the administrative notice documents. The Government also withdrew the allegation in SOR ¶ 2.a. The transcript was received on January 29, 2016. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice – Pakistan

The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute.

In 2014, portions of Pakistan's Federally Administered Tribal Areas, Khyber Pakhtunkhwa province and Balochistan province, remained a safe haven for terrorist groups seeking to conduct domestic, regional, and global attacks. Within the past few years, Pakistan has experienced significant terrorist violence. As of February 2015, the U.S. State Department warned U.S. citizens to defer all non-essential travel to Pakistan, because the presence of several foreign and indigenous terrorist groups poses a potential danger to U.S. citizens throughout Pakistan. Further concerns about Pakistan include the potential for weapons of mass destruction trafficking, and proliferation. (Admin Not 1)

Pakistan continues to have serious human rights problems including extrajudicial and targeted killings, disappearances, torture, lack of rule of law (including lack of due process, poor implementation and enforcement of laws, frequent mob violence and vigilante justice, and sectarian violence). Government and police corruption as well as rape, domestic violence, sexual harassment, honor crimes, and discrimination against women and girls remain serious problems. Lack of government accountability is a problem. Abuses often went unpunished fostering a culture of impunity. Authorities seldom punish government officials for human rights violations. (Admin Not 1)

Findings of Fact

In her answer to the SOR, Applicant admits to all of the allegations in the SOR. (Item 3)

Applicant is a 29-year-old employee of a Department of Defense contractor who is applying for a security clearance for the first time. She has been with her employer for the past year and a half. She has a bachelor's degree. She is married and has a seven-year-old son. (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information.)

Applicant was born in Pakistan. She and her family moved to the United States when she was 13. Applicant, her parents, and siblings became U.S. citizens in 2009. Applicant attended middle school, high school, and college in the United States. She married her husband in 2006. At the time, he was a Pakistani citizen. He became a permanent U.S. resident in 2011, and a U.S. citizen in 2013. Their son was born in the United States in 2008. (Tr. 12-16; Gov 1)

Applicant moved to Pakistan in 2009. Her husband and his family lived in Pakistan. She wanted to be with her husband. They moved to the United States in March 2011, after her husband was granted permanent resident status in the United States. Applicant and her husband own no assets or property in Pakistan. They recently purchased their first home in the United States and intend to make the United States their home. (Tr. 14-15, 17)

Applicant's parents-in-law are citizens of and reside in Pakistan. Her father-in-law owns his own business. Her mother-in-law is a housewife. They are submitting paperwork to immigrate to the United States. She has three brothers-in-law. All three reside in Pakistan. One is a veterinarian and is married to a U.S. citizen who resides in the United States with their child. He is awaiting approval of his immigration paperwork before moving to the United States to be with his wife. Another brother-in-law is a medical resident. He hopes to immigrate to the United States. The third brother-in-law is a fashion designer residing in Pakistan. None of her in-laws work for the Pakistani government or military. Applicant has aunts and uncles who live and reside in Pakistan. None work for the Pakistani government. (Tr. 13-14, 21-22)

Applicant's parents and her youngest sister moved to Saudi Arabia in 2007. Her father works for a U.S. corporation on a secure U.S. compound located in Saudi Arabia. They moved to Saudi Arabia because of her father's employment. Her youngest sister just graduated from high school and is applying to colleges located in the United States. Her older brother and his wife and child are U.S. citizens and live in the United States. Her younger sister, her husband and daughter are U.S. citizens residing in the United States. (Tr. 12-13, 16, 26, 28-29; Gov 1)

Applicant cannot find her most recent Pakistani passport. She recalls that it was reissued in 2008 and she believes it had an expiration date of either 2010 or 2013. The passport was issued to her a year before she became a U.S. citizen. Applicant used her Pakistani passport to travel to Saudi Arabia to visit her parents in April 2010, after she became a U.S. citizen. She was living in Pakistan at the time. The Saudi Embassy located in Pakistan refused to grant a visa on her U.S. passport, but agreed to grant a visa on her Pakistan passport. If she wanted a visa using her U.S. passport, they told her that she would have to request a visa from the Saudi Arabian Embassy in the United States. Applicant used her Pakistani passport because she did not want to go to the expense of traveling to the United States to obtain a visa. (Tr. 22, 24, 27, 30; Response to SOR)

Applicant believes her Pakistani passport is expired. She does not intend to renew the passport. She testified that she would not be able to renew it because Pakistan does not recognize dual citizenship. (No documents were presented verifying this policy.) Applicant traveled to Pakistan in 2013 to attend her brother-in-law's wedding, and for 12 days in 2015. She used her U.S. passport on both of these trips. (Tr. 17, 21, 23-25, 30)

In her response to the SOR, Applicant mentioned that she submitted paperwork to the Embassy of Pakistan to renounce her citizenship. She provided a copy of the form which she completed on August 28, 2015. (AE A, Answer to SOR)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 as to 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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).

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates two conditions that could raise a security concern and may be disqualifying under AG ¶ 7 according to the facts of this case:

AG ¶ 7(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; and

AG ¶ 7(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.

Several foreign and indigenous terrorist groups within Pakistan create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) raises a security concern regarding Applicant’s relatives who are citizens of and reside in Pakistan. A valid concern is raised with regard to Applicant’s parents-in-law, and three brothers-in-law who are citizens of and reside in Pakistan. It is noted that the SOR only alleges Applicant’s parents-in-law.

AG ¶ 7(b) is applicable because Applicant’s connections with her extended family members in Pakistan create a potential conflict of interest between Applicant’s obligation to protect sensitive information or technology and her desire to help her extended family members by providing that information.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Of these conditions, three potentially apply to Applicant’s case:

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.;

AG ¶ 8(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; and

AG ¶ 8(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.

I find AG ¶ 8(b) applies. While Applicant has familial obligations to her in-laws who are citizens of and reside in Pakistan, her husband and child are citizens of and reside in the United States. Applicant has longstanding ties to the U.S., having lived in the U.S. since the age of 13, with the exception of the two-year period where she resided with her husband in Pakistan awaiting approval of his immigration to the United States. She attended middle school, high school, and college in the United States. All of her professional life has been in the United States. All of her assets are here. With the exception of her parents and one sister who reside in Saudi Arabia, Applicant's closest family members and relationships are in the United States. Her son was born here. She and her husband recently purchased their first home and intend to live in the United States. She can be expected to resolve any conflict in favor of U.S. interests. Security concerns raised under Foreign Influence are mitigated.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concern under paragraph 10.

AG ¶ 10(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to:

- (1) Possession of a current foreign passport;
- (2) Military service or a willingness to bear arms for a foreign country;
- (3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

- (4) Residence in a foreign country to meet citizenship requirements;
- (5) Using foreign citizenship to protect financial or business interests in another country;
- (6) Seeking or holding political office in a foreign country; and
- (7) Voting in a foreign election;

AG ¶ 10(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

AG ¶ 10(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

AG ¶ 10(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶¶ 10(a) no longer applies to Applicant's case because Applicant's Pakistani passport is expired. AG ¶ 10(b) applies because Applicant admits to using her Pakistani passport after becoming a U.S. citizen when she traveled to Saudi Arabia in 2010. Traveling on a foreign passport is considered an exercise of foreign citizenship.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline C, Foreign Preference. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. September 22, 2005))

Guideline C also includes examples of conditions that could mitigate security concerns arising from foreign preference. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

AG ¶ 11(b) the individual has expressed a willingness to renounce dual citizenship;

AG ¶ 11(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

AG ¶ 11(d) use of a passport is approved by the cognizant security authority;

AG ¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(a) applies because Applicant is a citizen of Pakistan by virtue of her birth in Pakistan. AG ¶ 11(b) applies because Applicant not only expressed a willingness to renounce her Pakistani citizenship, she also submitted an application to renounce her Pakistani citizenship to the Embassy of Pakistan in August 2015. She has not renewed her Pakistani passport after becoming a U.S. citizen.

I also considered that Applicant's actions occurred before she submitted her security clearance application. She is aware of the security concerns about possessing a foreign passport and does intend to renew her Pakistani passport. For these reasons, I find Applicant mitigated the security concerns under foreign preference.

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 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 considered Applicant moved to the United States when she was 13. She attended middle school, high school, and college in the United States. She became a U.S. citizen in 2009. She has not renewed her Pakistan passport after becoming a U.S. citizen. While she lived in Pakistan awaiting her husband's permanent resident status in the United States, they immediately moved to the United States once her husband's immigration paperwork was approved. Her husband became a naturalized citizen in 2013. Their son was born in the United States. They intend to live and work in the United States.

Most of Applicant's siblings work and reside in the United States. Her youngest sister still lives with her parents in Saudi Arabia, but hopes to attend a U.S. college next fall after graduating from high school. Her parents live in Saudi Arabia because her father is an employee of a U.S. corporation that has a contract there. Her parents are U.S. citizens. Applicant's in-laws are citizens of and reside in Pakistan, however, they plan to immigrate to the United States.

Most telling, Applicant not only expressed a willingness to renounce her Pakistani citizenship, she submitted documents expressing her intent to renounce her Pakistani citizenship to the Embassy of Pakistan.

Although Applicant has in-laws and extended family members residing in Pakistan, her immediate family members and all of her investments are located in the United States. Applicant's longstanding ties in the United States indicate that Applicant can be expected to resolve any conflict in favor of U.S. interests.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	Withdrawn
Subparagraph 2.b:	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.

ERIN C. HOGAN
Administrative Judge