

DATE: December 26, 2001

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-07212

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

, Department Counsel

Marc Curry, Department Counsel

#### **FOR APPLICANT**

Richard L. Moorhouse, Esq.

Leigh Hansson, Esq.

### **STATEMENT OF THE CASE**

On May 29, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 15, 2001, and requested a hearing. The case was assigned to this Administrative Judge on September 27, 2001, and was scheduled for hearing. A hearing was convened on October 12, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on two witnesses (including himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on October 22, 2001.

### **STATEMENT OF FACTS**

Applicant is a 46-year old president of a soft-ware defense contractor whose government contracts are entirely devoted to domestic work: it does no work overseas (*see* R.T., at 30). He seeks retention of his security clearance.

#### **Summary of Allegations and Responses**

Applicant is alleged to have (1) exercised dual citizenship with Pakistan and the US, (2) reapplied for a Pakistani

passport in October 1998 even though he had become a naturalized US citizen in February 1986 and received a Pakistani passport which will not expire until October 2003, and (3) used his Pakistani passport instead of his US passport when entering and exiting Pakistan in at least 1993.

Additionally, Applicant is alleged to have a father and two brothers, both citizens and residents of Pakistan, with whom he maintains regular contact.

For his response to the SOR, Applicant admitted to most of the allegations covered by foreign preference, but denied exercising dual citizenship or using his Pakistani passport to enter or exit Pakistan in 1993 or at any other time after becoming a US citizen. He claimed a willingness to renounce his Pakistani citizenship if necessary and to already have surrendered his Pakistani passport to the Pakistani deputy chief of mission in June 2001. Applicant claimed his major reason for renewing his Pakistani passport in 1998 was to ease his ability to obtain a travel visa to travel to Pakistan, and not to enter/exit Pakistan or any other checkpoint to Pakistan. He claimed that had he known that his possessing a Pakistani passport could create a security clearance issue, he would not have renewed it. Applicant claimed he used his US passport to travel to Pakistan.

Addressing the foreign influence issues, Applicant admitted to his father and two brothers being citizens and residents of Pakistan, but denied any exposure to influence/duress by reason of his father and brothers being citizens and residents of Pakistan. He claimed to have sponsored his parents and brothers to become permanent US residents, but because his mother died in 1988 and his father is aged and in poor health, they never accepted US residency. He claimed his brothers and their families still intend to become permanent US residents. Applicant claimed, too, that he has no financial assets in Pakistan, owns no property there, maintains no bank or stock accounts there and has not voted in a Pakistani election since becoming a US citizen. He claimed by contrast to have voted regularly in US elections since becoming a US citizen, to be married to a US citizen by birth, to have two children who are US citizens by birth, to have a home and other assets in the US and to be actively involved in his community, both individually and through his company, which sponsors an annual charity golf course to fund leukemia research.

### **Relevant and Material Factual Findings**

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Born and reared in Pakistan to Pakistani parents, Applicant emigrated to the US in 1975 at the age of 21 to pursue college studies in information technology. Before emigrating to the US, he never served in the Pakistani military.

Upon emigrating to the US in 1975, Applicant pursued a technical curriculum. He graduated from a local university in 1977 with a BS degree in information systems and began his professional career as a computer programmer with a local employer. Over the course of the ensuing 10 years, he worked his way up the corporate management chain, first to manager, and then to project director, before he left his company in 1988 to found his own company, which specializes in two defined areas: software development, maintenance and enhancement is one area, and infrastructure support network management, desktop support provide the other area of emphasis.

Applicant married in 1982 to Ms. A, who is a US citizen by birth. He has two children by his spouse: ages 5 and 2. Applicant and his spouse have lived in the same area of their established US community since 1985 and have owned their home since 1988. All of Applicant's financial assets (including his home, bank accounts, insurance plans, stock accounts and 401(k) plan) are located and administered in the US. Since becoming a US citizen, he has voted only in US elections, a privilege of US citizenship he has regularly exercised (R.T., at 49).

Besides voting in US federal, state and local elections since becoming a citizen, Applicant has been very active and instrumental in raising money for charity, both personally and through his company. His company (which employs over 200 employees), for instance, sponsors an annual charity golf tournament to raise money for leukemia research (*see* R.T., at 26, 34). Applicant encourages his company employees to stay involved in community activities and programs with their voluntary efforts (R.T., at 36).

Applicant's parents were born in India and became Pakistani citizens by virtue of the partition of India and Pakistan in

1947. His mother and father were both physicians in the Pakistani Army traveled extensively throughout the world for educational and work-related purposes. Applicant has two brothers: The eldest (a retiree of the Pakistani Army) is an operations manager for a Pakistani telecommunications company; the younger brother is a physician who has never been in the Pakistani military or government.

Soon after he became a US citizen, Applicant sponsored his parents and brothers for permanent residence in the US. But although his parents were approved for permanent residency in 1987, his mother died in 1988; while his elderly father (who is in poor health) is unable to travel. Applicant anticipates both his brothers emigrating to the US within the foreseeable future (*see* R.T., at 31-33).

Hopeful of taking advantage of a more streamlined visa process in place for persons who previously resided in Pakistan (and for no other purpose), Applicant renewed his Pakistani passport in 1988, after he had become a US citizen and obtained a US passport. At the time of his making application, he had no intention of using his renewed Pakistani passport to enter or exit Pakistan. To date, he has not used his foreign passport (R.T., at 39-40). On the two occasions he has traveled since renewing his Pakistani passport, he traveled to Pakistan (in 1993 and again in 1998) to visit his family. In both instances, he used his US passport to enter and exit the country (*compare* exs. B and D with R.T., at 43-45). At the time of issuance of the SOR, his Pakistani passport carried an October 2003 expiration date (*see* ex. E).

In June 2001, Applicant took concrete steps toward renouncing his Pakistani citizenship and surrendering his Pakistani passport. Pakistan's embassy official responsible for receiving surrendered passports acknowledged Applicant's surrender of his Pakistani passport later in June 2001 (*see* ex. G). He feels no allegiance or obligation to Pakistan (R.T., at 40) since taking his oath of allegiance as a US citizen.

While Applicant does harbor some fears for the safety of his family residing in Pakistan in the wake of the events of September 11, 2001 (*see* R.T., at 50-51), he has no reason to believe that either his father or brothers and family members currently residing in Pakistan are at risk to foreign pressure or influence to obtain classified information from Applicant or the US (R.T., at 41, 56). But if were pressures were ever exerted on his family members, he would work with US authorities to resolve the problem (R.T., at 54). He received no assistance of any kind from Pakistani authorities in the processing of his US residency sponsorship application in behalf of his parents and brothers. Applicant assures he has no reason to return to Pakistan to reside and has unwavering loyalty to the US. His assurances are credible and accepted.

With his wife and children all US citizens by birth, and with all of his material possessions being in the US, he is totally committed to protecting US interests to the mutual exclusion of Pakistan were an inter-state conflict to develop. Applicant persuades that he cannot be subjected to foreign influence under any perceived set of circumstances. True, he does profess to have regular contact with his family members residing in Pakistan. But he has no immediate plans to travel to Pakistan to see them in the foreseeable future and is considered unlikely to do so under the present circumstances.

## **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Foreign Preference**

*The Concern:* 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.

### **Disqualifying Conditions:**

DC 1: The exercise of dual citizenship

DC 2: Possession and/or use of a foreign passport.

### **Mitigating Conditions:**

MC 1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

MC 4: Individual has expressed a willingness to renounce dual citizenship.

## **Foreign Influence**

*The Concern:* A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are obligation *are not* citizens of the United States *or may* be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

### **Disqualifying Conditions:**

DC 1: An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

### **Mitigating Conditions:**

MC 1: A determination that the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

## **Burden of Proof**

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make

a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation,

extenuation or mitigation of the Government's case.

## CONCLUSIONS

Applicant is a naturalized US citizen who after being born and raised in Pakistan emigrated to the US in 1977 to pursue educational opportunities. In accepting US citizenship in 1986, he did not renounce his Pakistani citizenship, and later (in 1998) applied for a renewal of his Pakistani passport, unaware at the time that either his dual citizenship or possessing a Pakistani passport could jeopardize his US-issued security clearance. Made aware of the security implications of holding dual citizenship, he renounced his Pakistani citizenship this year. Security issues are raised over Applicant's dual citizenship exercise and his possession of a Pakistani passport. Issues of security concern encompass as well his having immediate family members with Pakistani citizenship and residence who could be at risk to coercion, exploitation, or pressure, such that could result in the compromise of classified information.

### **Foreign Preference**

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference for the interests of the foreign country over the interests of the US. While dual citizenship itself is not a *per se* disqualifier for a security clearance, its active exercise can be. The issues raise concerns over Applicant's preference for a foreign country over the US.

Here, the primary issue is whether Applicant by renewing his Pakistani passport in 1998 and not renouncing his Pakistani citizenship and taking steps to surrender his Pakistani passport until after clearance procedures were initiated against him reveal a preference for his birthplace (Pakistan) over his adopted country (the US).

Without denying continuing affections for his birthplace, as well as the current place of residence of his father and brothers, Applicant insists his preference remains for US, which he would never compromise under any circumstances, should competing geopolitical interests develop between the two countries. Certainly, Applicant manifested his support for the US in several important ways since taking his oath of allegiance in 1986: He has never served in Pakistani's military or voted in any of its elections; he owns no property or other financial interests in Pakistan; and he has never accepted any benefits or privileges from Pakistan since becoming a US citizen. Applicant is university trained in the US; he owns a home in the US; and he has voted regularly in US elections. His US preference credits also include his founding his own company which currently employs over 250 persons, contributing regularly and substantially (both through his company and individually) to major US charities, and using his US passport exclusively when traveling to Pakistan to see his family, or other countries abroad. Both his wife and young children are US citizens by birth.

So even though Applicant renewed his Pakistani passport in 1998, he has never used it in any of his travels abroad. Advised that his possessing a Pakistani passport posed a major security concern under the clarifying guidelines of the memorandum issued by the Assistant Secretary of Defense for Command, Control, Communication and Intelligence (ASDC3I), dated August 16, 2000, entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline (*hereinafter* "Money memo"), Applicant unconditionally renounced his Pakistan citizenship and surrendered his Pakistani passport (*see ex. 3*). No conclusions warrant that Applicant at any time since his becoming a US citizen manifested a preference for any country but the US.

Taking into account all of the evidence presented in the record, Applicant mitigates any security concerns raised by his passive holding of dual citizenship with another country (Pakistan), averts any risk of recurrent dual citizenship questions by his renouncement of his Pakistani citizenship and convinces that his acceptance of a renewed Pakistani passport (however brief) does not expose him to future risks of providing information that could be harmful to the security interests of the US. His essentially passive holding of dual citizenship over a fifteen-year span between 1986 and 2001 (broken only by his renewal of his Pakistani passport in 1998) creates no competing allegiance concerns for Applicant that might otherwise exist for clearance holders that manifest that exhibit active dual citizenship. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.c of Guideline C.

### **Foreign Influence**

Government concerns over the risk of Applicant's father and brothers (who are each citizens of Pakistan who reside in

Pakistan) being subject to coercion or pressure are also present. Because Applicant's father and brothers remain Pakistani citizens and residents, his immediate family members may present security risks covered by disqualifying condition (DC) 1 of the Adjudication Guidelines for foreign influence. The citizen/residence status of these relatives in Pakistan pose some potential concerns because of the risks of coercion or influence that could compromise classified information under Applicant's possession and/or control.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security investigations continue to be governed by the same Change 2 requirements of DoD Regulation 5200.2-R for appraising the security risks associated with the individual's having family abroad. These investigatory requirements of the Regulation as they pertain to hostage situations were never deleted or replaced

and retain their applicability according to the dictates of individual cases. *See* 32 C.F.R. Sec. 154.8 (1998) (corresponds to DoD Regulation 5200.2-R, Sec. 2-403).<sup>(1)</sup> And Section 6.1 of the Directive (under procedures) provides that industrial security clearance applicants be investigated in accordance with the standards in the governing DoD regulation.

Whatever potential security risks arise as the result of Applicant's having immediate family members in Pakistan, they are by every reasonable measure mitigated. Applicant's situation is in marked contrast to a situation where an applicant's family reside in a country whose interests are considered inimical to those of the US. Pakistan is not a hostile country, but a country who enjoys allied support with the US in their current joint security efforts. Put another way, Pakistan is not a country hostile to the security interests of the US, but a country whose political institutions (while not democratic at present) are sufficiently aligned with our own traditions (which include the rule of law) to absolve Applicant of any foreseeable security risk. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved.

Because of the presence of Applicant's immediate family members in Pakistan (a country whose interests have recently been friendly to those of the US), any potential risk of a hostage situation becomes unlikely, or at the very least, an acceptable one. The mitigation benefits of MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant herein. Applicant may also claim the mitigation benefits of MC 5 (minimal foreign financial interests). Overall, any potential security concerns attributable to Applicant's having immediate family members in Pakistan are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Pakistan. Favorable conclusions warrant with respect to sub-paragraph 2.a of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

CRITERION C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

CRITERION B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge

1.