

DATE: May 9, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14444

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-five year old Pakistani-born Applicant--holding dual citizenship because of his July 1999 naturalization as a U.S. citizen--obtained a Pakistani passport in April 1998, before he was naturalized; and failed to surrender the Pakistani passport, or to obtain official approval for the foreign passport from the appropriate agency of the United States Government. In light of the August 2000 ASD/C³I memorandum implementing a passport policy "clarification," grave questions and doubts are raised as to his allegiance to the United States and as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On January 29, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 12, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on February 26, 2002. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He subsequently did so without any objection being interposed by Department Counsel. The case was assigned to, and received by, this Administrative Judge on May 3, 2002.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign preference and foreign influence under Guidelines C (subparagraphs 1.a. and 1.b.) and B (subparagraphs 2.a. through 2.c.), respectively. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 35 year old male employed by a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been divulged.

He was born in 1966 in Pakistan.⁽²⁾ His entire family was born in Pakistan. His father is deceased. His siblings are all citizens and residents of Pakistan.⁽³⁾ His wife and mother are both citizens of Pakistan, but reside in the United States.⁽⁴⁾ His mother has resided in the U.S., with Applicant, since February 2001, and has applied for permanent residency with the intention of becoming a U.S. citizen at her earliest opportunity, which is estimated to be five years from an otherwise unspecified date.⁽⁵⁾ His wife has resided in the U.S., with Applicant, for an unspecified period, since prior to February 12, 2002. She will be eligible for U.S. citizenship in February 2003.⁽⁶⁾ Applicant's son was born in Pakistan in 1999,⁽⁷⁾ and he is a dual citizen of Pakistan (by location of his birth) and the U.S.⁽⁸⁾ He resides in the U.S. with his parents.⁽⁹⁾ His five siblings reside in Pakistan, but intend to emigrate when their mother obtains her U.S. citizenship.⁽¹⁰⁾

Applicant came to the U.S. in June 1991,⁽¹¹⁾ and attended college in the U.S. from June 1995 until he obtained his degree in July 1999.⁽¹²⁾ He has been employed by the same company in the U.S. since February 1994.⁽¹³⁾ The quality of his performance has not been revealed.

In April 1998, before he became a naturalized U.S. citizen, Applicant was reissued a Pakistani passport which is scheduled to expire in April 2003.⁽¹⁴⁾ It is unclear if he has ever used the Pakistani passport since becoming a U.S. citizen as he never addressed that issue directly in his statement or responses. He did, however, state: "I have been using US Passport . . . since I became US citizen (even when I go to Pakistan to visit my family). . . ."⁽¹⁵⁾

Although Applicant, as a dual citizen, holds passports from two countries, and has resided and worked, as well as been educated, in the U.S., he contends his loyalties and allegiance lie with the United States. In this regard, he stated:⁽¹⁶⁾

US law does allow to have dual citizenship with some of the countries and Pakistan is one of them. So, that's why I do have dual citizenship under that law. But, if its illegal for a US citizen to have dual citizenship and if that's the only barrier stopping me to get security clearance then let me know. I have been using US Passport and acting as a law-abiding US citizen since I became US citizen (even when I go to Pakistan to visit my family) that shows that **I am giving preference to US over other country (Pakistan).**

Despite his avowed allegiance to the United States, Applicant is not amenable to renouncing his Pakistani citizenship. In this regard, in August 2000, he stated:⁽¹⁷⁾

. . . I do not want to renounce my Pakistani citizenship for my security clearance for the following reasons: (I) I may decide in future to go back to Pakistan to live there; (ii) I want to use the privilege of dual citizenship (as its given by US/Pakistan gov to me); (iii) my brother/sister still live in Pakistan.

Applicant considers himself to be a "model US citizen" for a number of reasons: (1) he always pays his taxes; (2) he has never been affiliated with any political group in either country; (3) he has never been arrested; (4) he has never received any benefits from Pakistan and has no financial or business ties there; and (5) he has no associates in Pakistan other than his siblings.⁽¹⁸⁾

As of the date of the closing of the record herein, it appears Applicant still possesses a Pakistani passport, and there is

no evidence in the record that its use or possession has been officially approved by the appropriate agency of the United States Government.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[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 or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include:

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport.

Conditions that could mitigate security concerns include:

- (1) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (4) individual has expressed a willingness to renounce dual citizenship.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) issued a passport policy "clarification" pertaining to Adjudicative Guideline C--foreign preference. A photocopy of the memorandum was furnished to Applicant along with the SOR on September 8, 2000. ⁽¹⁹⁾ The memorandum states, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises

doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. *Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.* Modification of the Guideline is not required. (Emphasis supplied)

[GUIDELINE B - FOREIGN INFLUENCE]: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) 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.

Conditions that could raise a security concern and may be disqualifying include:

- (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;
- (2) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists.

Conditions that could mitigate security concerns include:

- (1) a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;
- (5) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(20\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each

allegation set forth in the SOR:

With respect to Guideline C, the Government has established its case. Applicant has been portrayed as a naturalized American citizen who has acted in such a way as to indicate a preference for a foreign country--in this instance, Pakistan--over the United States, and in so doing, he may be prone to provide information or make decisions harmful to the interests of the United States.

In support of its contentions, the Government has cited Applicant's exercise of "dual citizenship" with Pakistan and the United States; his unwillingness to renounce his Pakistani citizenship; his continued possession of a Pakistani passport; and his failure to surrender that passport. While it appears Applicant is still in possession of his Pakistani passport, there is no evidence in this case to support the Government's contention that the simple possession of a foreign passport by a dual citizen, in the absence of other activities, constitutes the active "exercise of dual citizenship." Applicant is passively, rather than actively, exercising the rights and privileges of a citizen of Pakistan by possessing that passport and not accepting other benefits from that country. Moreover, it is doubtful if such passive exercise of dual citizenship is what was envisioned to place such conduct under foreign preference disqualifying condition (DC) E2.A3.1.2.1.

Applicant's allegiance to the United States has been questioned, and an allegation made he prefers Pakistan over the United States. A review of the evidence reveals his allegiance and loyalty to the United States are ostensibly resolute, but impacted by his unwillingness to renounce his Pakistani citizenship. He does not wish to do so because: (I) he may decide in the future to return to Pakistan to live; (ii) he wants to retain the legal privileges of dual citizenship; and (iii) his siblings still reside in Pakistan. This scenario creates quite a conundrum for on the one hand Applicant claims his entire family either already resides in the U.S. or will eventually relocate here, and on the other hand he is unwilling to renounce his Pakistani citizenship because he may wish to return, and his family still resides in Pakistan.

Applicant's dual citizenship, based solely on his parents' citizenship or birth in Pakistan, clearly falls within foreign preference mitigating condition (MC) E2.A3.1.3.1. However, his unwillingness to renounce his Pakistani citizenship denies him the benefit of MC E2.A3.1.3.4. But, even more significant is his failure to surrender the Pakistani passport.

As noted above, in August 2000, ASD/C³I issued a passport policy "clarification." Under that policy "clarification," it is clear the possession and/or use of the Pakistani passport falls within DC E2.A3.1.2.2. The ASD/C³I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate solely to the use of a foreign passport, and not to mere possession of same. On the other hand, the memo requires a clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." The policy, as "clarified" by ASD/C³I and interpreted by the Appeal Board, must be complied with. Consequently, I conclude Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded against Applicant.

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, Applicant's mother, wife, son, and five siblings--are not citizens of the United States or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. Based on my review of the evidence, I conclude the security concerns manifested by the Government, in this instance, are largely unfounded.

It is uncontroverted that Applicant's siblings are citizens and residents of Pakistan. That simple fact, standing alone, is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B: [\(21\)](#)

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No.

98-0419 (April 30, 1999) at p. 5.

Applicant's mother and wife are citizens of Pakistan, but as noted above, both are now residents of the U.S. and reside with Applicant. His mother has applied for permanent residency with the intention of becoming a U.S. citizen, and his wife will be eligible for U.S. citizenship in February 2003. Additionally, Applicant's son is a dual citizen of Pakistan and the U.S., and he too resides in the U.S. with his parents. Their "foreign" influence on him is deemed minimal at best.

The residence and citizenship of Applicant's family members are clearly of security concern under foreign influence Disqualifying Condition (DC) E2.A2.1.2.1. and DC E2.A2.1.2.2., but the significance of that ruling is mitigated by the "protection" afforded by foreign influence Mitigating Condition (MC) E2.A2.1.3.1. In this instance, after an examination of the evidence, I determine that Applicant's immediate family, considering their citizenship and residency status, does not constitute an unacceptable security risk. Furthermore, their continuing personal relationship is viewed in positive terms, having no security significance.

Applicant has no financial interests in Pakistan, and thus, his potential vulnerability to coercion, exploitation, or pressure, is, under the circumstances, virtually nil. Such a conclusion is in concurrence with foreign influence MC E2.A2.1.3.5. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegations 2.a. through 2.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted five items in support of its contentions.
2. *See* Item 4 (Security Clearance Application, dated November 2, 1999), at 1.

3. *Id.*, at 3-4.
4. *See* Item 2 (Response to SOR, dated February 12, 2002).
5. *Ibid.*
6. *Ibid.*
7. *See* Item 4, *supra* note 2, at 3.
8. *See* Item 2, *supra* note 4.
9. *Ibid.*
10. *Ibid.*
11. *See* Item 5 (Statement of Subject, dated August 29, 2000), at 1.
12. *See* Item 4, *supra* note 2, at 2.
13. *Ibid.*
14. *See* Item 2, *supra* note 4.
15. *Ibid.*
16. *ee* Item 5, *supra* note 5, at 10. (Emphasis in original)
17. *See* Item 5, *supra* note 11, at 1.
18. *Id.*, at 2.
19. *See* Item 3 (Attachment 3 to Letter of Transmittal from DOHA, dated January 29, 2002). Applicant acknowledged receipt of the materials on February 4, 2002. *See* Receipt, dated February 4, 2002), attached to Item 3.
20. *See* Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).
21. *See* ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.