

DATE: April 21, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29403

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Mark S. Zaid, Esq.

SYNOPSIS

Applicant, a certified public accountant who owns his own business, was born in Pakistan. He has lived in the United States since he was approximately 15 years old, and he received his secondary, college, and graduate education in the United States. Applicant's father, who is in poor health, and two of his siblings are residents and citizens of Pakistan. His wife is a U.S. citizen. Her father, who is in fragile health, three of her siblings, and an aunt are residents and citizens of Pakistan. Applicant and his wife are in frequent telephone contact with their fathers and solicitous of their health. Applicant's continuing ties of affection and obligation to family members in Pakistan create the potential for foreign influence that could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 31, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant initially answered the SOR in writing on March 22, 2003 and requested that his case be determined on the record in lieu of a hearing. On July 23, 2003, Applicant requested a hearing before an administrative judge instead of a decision on the record. The case was assigned to me on October 29, 2003. On November 26, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on December 8, 2003.

FINDINGS OF FACT

The SOR contains eight allegations of disqualifying conduct under Guideline B, Foreign Influence, of the Directive. In his answer to the SOR, Applicant admitted seven of the allegations and denied one allegation. At his hearing, Applicant supplied evidence that his wife had recently become a U.S. citizen, plans to relinquish as soon as possible her Pakistani

passport, and has applied for a U.S. passport, thus providing mitigation to the allegation at ¶ 1.c. of the SOR. He also admitted that in addition to the 1994 and 1999 trips to Pakistan alleged in SOR ¶ 1.h., he had also traveled to Pakistan in 2002 to visit family and to London in 2003 to visit his father and sister, who had traveled there from Pakistan. Applicant's admissions are incorporated as findings of fact.

Applicant was born in Pakistan and came to the United States with his father, who was employed by the government of Pakistan. He is now 52 years old and has lived in the United States since his early teens. Applicant married first in 1981. He was divorced in 1990. Applicant married again in 1994. His second wife was born in Pakistan. Applicant and his second wife are American citizens. They are the parents of a young child.

Applicant is a certified public accountant. He holds a master's degree in business administration, which he earned with distinction. In 1990, he founded his own accounting business. The business is a government contractor. Applicant has not held a security clearance in the past. He has twice served as an officer in a business group comprised of Pakistani-American businessmen. He has been recognized as an outstanding businessman by numerous civic and professional organizations.

Applicant's mother, a resident and citizen of Pakistan, died in September 2001. His father and two siblings are residents and citizens of Pakistan. Before his mother died, Applicant sent his parents approximately \$300 to \$600 per year. His father now lives alone and is in ill health, and Applicant speaks with him by telephone twice a month. One of his siblings, a brother, is an accountant who works for a government entity in Pakistan. His other sibling living in Pakistan, a sister, is a homemaker and part-time English teacher. He speaks on the telephone with his siblings in Pakistan three or four times a year. Applicant also has a brother who is a United States citizen and a sister who is a citizen of the United Kingdom.

Applicant's wife's father, three of her siblings, and an aunt are residents and citizens of Pakistan. Applicant's father-in-law is in deteriorating health. Applicant's wife speaks with her father in Pakistan every two weeks. She traveled to Pakistan with her daughter in 2002 to visit her father and other relatives. In 1994, 1999, and 2002, Applicant traveled to Pakistan to visit relatives. On his 2002 trip, he traveled to Pakistan to visit his father and to escort his wife and child back from a visit with the wife's relatives.

Applicant reported on his SF-86 that he owned, for investment purposes, two parcels of undeveloped land in Pakistan. He stated that he owned one parcel solely and he owned the other parcel jointly with his brother in Pakistan. At his hearing, Applicant presented documentation to show that he had relinquished to his brother the property of which he had been the sole owner. He also stated he was mistaken and did not own the second property jointly with his brother. Instead, he reported that the property was owned entirely by his brother and sister-in-law. Applicant has no financial holdings or bank accounts in Pakistan.

Applicant stated that he would not relinquish classified information even if members of his family or his wife's family were threatened with physical harm. He said he would notify appropriate authorities if his family members were threatened in an attempt to force him to divulge classified information.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions and

mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Adjudicative Guideline B, Foreign Influence, applies to this case. Under Guideline B, a security concern may exist when an individual's immediate family and other persons to whom he or she may be bound by affection, influence or 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. ¶ E2.A2.1.1.

Guideline B identifies several conditions that could raise security concerns:

An immediate family member of a person to whom the individual has close ties of affection or obligation is a citizen of or resident in a foreign country (¶ E2.A2.1.2.1.);

The individual seeking clearance shares living quarters with a person or persons, regardless of citizenship status, if the potential for adverse foreign influence or duress exists (¶ E2.A2.1.2.2.);

Relatives, cohabitants, or associates who are connected with any foreign government. (¶ E2.A2.1.2.3.)

The individual seeking clearance displays conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government (¶ E2.A2.1.2.6.).

Guideline B mitigating conditions that might apply to this case include:

A determination that the immediate family members (spouse, mother, brothers) or associates in question 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 (¶ E2.A2.1.3.1);

Contact and correspondence with foreign citizens are casual and infrequent (¶ E2.A2.1.3.3.).

CONCLUSIONS

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's close familial and friendship ties with and obligations to citizens of Pakistan created the potential for foreign influence that could result in the compromise of classified information. The SOR alleged that Applicant's father and two siblings reside in and are citizens of Pakistan (¶¶ 1.a. and 1.b.); that his wife is a citizen of Pakistan and currently holds a Pakistani passport (¶ 1.c.); that his wife's father, three siblings, and an aunt reside in and are citizens of Pakistan (¶ 1.d.); that his wife maintains telephone contact once every two weeks with her family in Pakistan (¶ 1.e.); that Applicant sent money to his parents in Pakistan in recent years (¶ 1.f.); that he owned two investment properties in Pakistan, one solely and one jointly with a brother (¶ 1.g.); and that he traveled to Pakistan in 1994 and 1999 to visit his family and father-in-law (¶ 1.h.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Pakistan and the United States have a special political and economic relationship. (3) At the same time it is also necessary to recognize that Pakistan is on the front lines in the war against international and regional terrorism and, despite the efforts of its government, there are individuals and groups within Pakistan who have acted and continue to act in a hostile manner to U.S. security interests. (4)

Applicant admits allegations of the SOR which raise security concerns under Guideline B, ¶¶ E2.A2.1.2.1, E2.A2.1.2.2, E2.A2.1.2.3, and E2.A2.1.2.6. His father and two siblings are residents and citizens of Pakistan. While his wife is now a U.S. citizen, her father, three siblings and an aunt are also residents and citizens of Pakistan. Because both of their fathers are in ill or declining health, Applicant and his wife are in frequent telephone contact with them. In December of 2002, Applicant's wife, while still a citizen of Pakistan, traveled with her young daughter to visit her family in Pakistan, and Applicant traveled to Pakistan to visit his family and to escort his wife and daughter back to the United States.

Applicant is close to his father and solicitous of his health and well being. In the past, when his mother was alive, he sent his parents money each year, although he has sent no money to his family in Pakistan since September 2001. Applicant has traveled to Pakistan three times in the past 10 years to visit his father and other relatives. In 2003 he traveled to London to visit his father and his two sisters. Applicant's filial conduct toward his father and his past financial support of his parents have the potential to make him vulnerable to coercion, exploitation, or pressure by a foreign government under disqualifying condition ¶ E2.A.2.1.2.6. His wife's relationship with her father and her family in Pakistan creates the potential for adverse foreign influence upon Applicant pursuant to disqualifying condition ¶ E2.A2.1.2.2. The record indicates that mitigating condition ¶ E2.A2.1.3.1 applies only in part to the facts of Applicant's case. While his widowed father and father-in-law are not agents of a foreign power, they are in fragile health and could be exploited by a foreign power in a way that could force Applicant to choose between loyalty to them and the United States. While Applicant has stated that hypothetically he would not be vulnerable to such pressure by a foreign power, his actions toward his father and father-in-law make it clear that his relationship with them is not casual and infrequent but intense and seriously concerned for their welfare. Thus, mitigating condition ¶ E2.A2.1.3.3. does not apply to Applicant's relationship with his father, nor does it apply to his relationship with his wife's father.

Applicant has one brother who is a resident and citizen of Pakistan and who works for a Pakistani governmental entity. Since the brother's livelihood likely depends upon his government connection, a security concern is raised under disqualifying condition ¶ E2.A2.1.2.3. This disqualifying condition is mitigated in part. While, pursuant to mitigating condition ¶ E2.A2.1.3.1., nothing in the record indicates that Applicant's brother is an agent of a foreign power, there is no evidence to show that he is not in a position to be exploited by a foreign power in a way that might force Applicant to choose between him and his well-being and his loyalty to the United States.

At his hearing, Applicant supplied persuasive evidence to show that his wife is now a U.S. citizen, has taken steps to apply for a U.S. passport, and will destroy her Pakistani passport when she receives her U.S. passport. By providing notarized real estate documents from Pakistan, indicating that his land interests would be transferred to his brother's ownership after Eid holidays, Applicant provided persuasive evidence that he has relinquished all real property interests he had in Pakistan. Thus, SOR allegations 1.c. and 1.g. are concluded for the Applicant.

Nothing in Applicant's testimony or demeanor suggested he was not a loyal American citizen and a credit to his adopted country. However, despite Applicant's sincere demeanor and his assurances that he is not a security risk, the circumstances of his family situation argue otherwise. He was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a., 1.b., 1.d., 1.e. 1.f., and 1.h. under Guideline B of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. *See* Exhibits B through H, submitted by Applicant for official notice.
4. *See* Exhibit 1, submitted by the Government for official notice.