

DATE: December 17, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21330

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Donna Lee Yesner, Esq.

SYNOPSIS

The fact that Applicant's parents, brother, and sister are citizens of Pakistan and residents of Pakistan and other foreign countries, and Applicant's cousin is a major in the Pakistani army, raise security concerns under the foreign influence guideline. These concerns are persuasively eliminated because none of the individuals at issue are agents of a foreign power. Further, none of the individuals (except for Applicant's cousin) are in a position to be exploited by a foreign power in a way that could force Applicant choose between the individual the United States (U.S.). Because his contact with his cousin is casual and infrequent at best, Applicant has effectively mitigated the foreign influence concerns of the SOR. Clearance is granted.

STATEMENT OF CASE

On May 5, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On June 2, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on August 28, 2003. On September 30, 2003, this case was set for hearing on November 5, 2003. The Government submitted one exhibit and Applicant submitted fourteen exhibits. Testimony was taken from Applicant. The transcript (Tr.) was received on November 13, 2003.

RULINGS ON PROCEDURE

The government exhibits shall be marked as "GE" followed by the number of the exhibit. Applicant's exhibits shall be marked as "AE" followed by the letter of the exhibit.

I have taken official notice of the "Consular Information Sheet" for Pakistan, dated May 23, 2003, Pakistan, Travel Warning" for November 4, 2003, distributed by the Department of State, Bureau of Consular Affairs, and "Pakistan-U.S. Relations," published by the Congressional Research Service (CRS), and updated on October 3, 2003.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B). In admitting subparagraphs 1.a. through 1.g., Applicant stated in his answer, "These [statements] have been part of my disclosure in my application and none of these factors have really changed from the day I was first granted clearance almost 14 years ago except for 1.e. and 1.f." Applicant's admissions to all factual allegations shall be incorporated in the following factual findings:

Applicant is 41 years old. He was hired as an engineer for the predecessor of his present employer in 1989 and is currently employed as manager of structural technology and prototyping. According to his security clearance application, Applicant seeks a secret clearance. (GE 1)

Foreign Influence. GE 1 also reflects Applicant was born in Pakistan on August 1, 1962, to resident citizens of the country. At the present time, Applicant's mother is 71-years-old (GE 1) and retired from employment as an elementary school teacher. (AE A) Applicant's father is 73 years old and retired as a lieutenant colonel in the Pakistani army in 1979. (Tr. 15) Applicant's father was retired before Applicant started working for his present employer in 1989. During retirement, Applicant's father worked first as an executive for a private organization with banking and industrial interests. (Tr. 15) Then, he found a job with a company that exports textile products to the United States (U.S.).

Applicant's parents do not need money from Applicant because they both are financially independent. Applicant's father receives a pension from the Pakistani military. Applicant's father purchased a condominium after he retired. However, he rents an apartment in another part of Pakistan because he currently works at that location.

Applicant has two older brothers, born in Pakistan. One brother, 45-years-old, became a U.S. citizen in 1989, and presently is the chief operating officer of his own company in the U.S. The second brother, 44-years old, came to the U.S. in 1979 for education. He completed college and medical school, but returned to Pakistan in 1991 when he was not appointed a hospital residency. The brother returned to the U.S. in 1998 to complete medical degree requirements, but is currently working at a department store a short distance away from Applicant. Applicant believes his second brother will be naturalized by January 2004. (Tr. 24)

Applicant's sister, 37-years-old, was born in Pakistan. She received her medical degree in Pakistan and is employed as a physician at a hospital in England. She has never had any connection with the English or Pakistani government. Applicant's sister entered the English medical system because of their recognition and acceptance of degrees and courses in the Pakistani medical system. (Tr. 25)

Applicant's cousin is a major in the Pakistani army. Applicant believed he might have seen his cousin during one of Applicant's visits to see his parents. Applicant explained the difficulty of remembering his cousin when Pakistani tradition brings hundreds of his relatives together to see another relative they have not seen for awhile. Applicant does not does not stay in contact with his cousin other than during Applicant's visits to the country. (Tr. 25-28)

Applicant maintains monthly electronic mail (e-mail) contact with his parents and sister. (AE A)

Applicant emigrated to the U.S. in 1980 and began his college studies. He also began courting his future wife. In 1984, he graduated with a bachelors degree in science and married his wife, an American citizen. His marriage to his wife, as well as career advancement, were the two major reasons he decided to permanently stay in the U.S. (Tr. 17, 18)

In about 1985, Applicant took a job in the midwest while his wife completed a year as a research assistant. The couple moved to another city in the midwest where Applicant's wife received her medical degree and Applicant received a master's in science degree. (Tr. 13) In September 1988, Applicant became a naturalized citizen. In February 1989, Applicant began working for the predecessor of his current employer while his wife continued her employment as a critical care position at the local hospital. He moved to his current job location in April 2001, and his wife found a

position as a hospitalist (specialist in hospital medicine).

Applicant has visited his family in Pakistan seven or eight times since 1980. (Tr. 18) Applicant visited his family twice in 1998. (GE 1) The first trip occurred in October 1998 on his way back to the U.S. after business-related activity in Malaysia. The second trip was a planned vacation that occurred in December 1998 when Applicant's stayed with his parents.

Applicant has two children born in the U.S. Both he and his wife have been active in their children's schools.

Applicant got involved in rowing about 14 years ago as high school instructor. Since then, Applicant has been instrumental in organizing the sport at a local and national level. (Tr. 20)

Applicant does not believe he could be influenced or pressured by a foreign concern by either coercive or non-coercive means. He stated:

[A]nd again, like I've said before, I think it's out of the question. And I think if had we gone deep into it and figured that out, that would be obvious. I mean, I've been -- I've had security clearance for 14 years, and never during any of those years has there ever been any case where anyone could even impugn that I did not do something that not according to regulations. (Tr. 63-64)

Later in Applicant's testimony, he explained that if someone were to approach him he would comply with security regulations/training by reporting the incident as he has done for 14 years. (Tr. 65) Applicant has never had any contact with Pakistani intelligence agents. Applicant remembered a security event which occurred a couple years ago when he was member of an American aeronautics association. Before Applicant interviewed with a foreign national regarding projects his employer was working, Applicant recalled the interview had to comply with an international trafficking arms regulation (designed to prevent the disclosure of information that could be harmful to the U.S. government or U.S. interests) administered by his security office. (Tr. 49)

Both Applicant and his wife have U.S. retirement accounts through their employers. (AE L) They want to retire in the U.S. because their children's school, their friends and family are all here. (Tr. 21) Applicant has no financial interest in Pakistan. (Tr. 22)

The senior manager of Applicant's division has worked over 1000 hours with Applicant and has found him to be forceful and disciplined in his work habits.

The director of Applicant's division, and an employee of the company for 30 years, has supervised Applicant for 14 years. The director convinced Applicant to resettle in the local area. The director considers Applicant reliable and trustworthy.

Applicant's direct supervisor for the past four years has always found Applicant to be meticulous complying with security regulations. Applicant's immediate supervisor on a day-to-day basis, is impressed with Applicant's sound judgment commonsense, and positive attitude. Applicant's department head while he was at the midwest location found Applicant's technical skills to be exceptional.

The facility security officer for the past six months found no security infractions in Applicant's file.

POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in

this case are:

Foreign Influence (Guideline B)

Disqualifying Conditions (DC):

1. An immediate family member, or a person to whom the individual has close bonds of affection or obligation, is a citizen of, or resident or present in, a foreign country;
3. Relatives, cohabitants, or associates who are connected with any foreign government.

Mitigating Conditions (MC):

1. A determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) 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 person(s) involved and the U.S.
3. Contact and correspondence with foreign citizens are casual and infrequent;

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that are speculative or conjectural in nature.

The Government must establish a *prima facie* case under foreign influence (Guideline B), which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Under the foreign influence guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons with whom her or she may be bound by affection, influence, or obligation, are not citizens of the U.S., or may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information.

After a careful review of Applicant's SCA, (AE A), and the transcript, the Government's case raises foreign influence concerns under DC 1 and DC 3 because Applicant's mother and father are resident citizens of Pakistan, his father is a retired Pakistani colonel, his brother, a citizen of Pakistan, is a resident of the U.S., his sister, a citizen of Pakistan, is a resident of England, and Applicant's cousin is a captain in the Pakistani army. Applicant maintains monthly e-mail

contact with his parents and sister, and he traveled to Pakistan in October and December 1998.

However, Applicant has met his ultimate burden of persuasion by demonstrating the immediate family members are neither agents of a foreign power nor in a position to be exploited by the foreign power in a way that could force Applicant to choose between loyalty to the family member and the U.S. Applicant's father, 73-years-old, a resident citizen of Pakistan, has been retired from the Army since 1979, about 10 years before Applicant even began working for his current employer. Second, Applicant's father is on a pension and working for a textile concern in private industry. Given his age, retirement, and employment in private industry, it is unreasonable to consider his father is agent of a foreign power or engaged in political or scientific activities that would allow him to benefit from U.S. security or defense information. I reach the same conclusion with respect to Applicant's mother who is 71 years. She is also retired, having been an elementary school teacher.

Applicant's 44-year-old brother is a citizen of Pakistan but currently is living in the U.S. close to Applicant. The brother, who is attempting to obtain his medical license in the U.S., as well as his U.S. citizenship, is currently working for a U.S. department store that clearly has no connection with a foreign government or in position whereby he could be taken advantage of by a foreign government.

Applicant's oldest brother, an immediate family who was born in Pakistan, is a resident citizen of the U.S., having been naturalized in 1989, and currently is chief executive officer of an electronics company in the northeastern U.S. His U.S. residency and citizenship raise no security concerns under the foreign influence guideline.

Applicant's sister, a citizen of Pakistan, has been a resident of England for three years. She and her husband are physicians. There is no indication she was ever an agent for Pakistan of England. Further, there is no indication she was ever in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his sister and the U.S.

Applicant has a cousin who was a captain in the armored infantry of the Pakistani army, who is now a major. DC 3 (relatives, cohabitants, or associates who are connected with any foreign government) is applicable since the cousin is an active member of the foreign military. However, Applicant is not close to his cousin and was not even certain he saw the cousin when Applicant visited Pakistan in 1998. In addition, Applicant does not maintain any contact with his cousin other than during the visits to Pakistan. Assuming Applicant interfaced with his cousin during the seven or eight visits in 23 years, the contact must be characterized as casual and infrequent, and Applicant's risk of vulnerability to undue influence through his cousin appears to be small, at best.

Applicant has a reasonably close relationship with his parents and sister as demonstrated by the regular e-mail exchange. Applicant has also visited his parents 7 or 8 times in the past 23 years. However, as noted earlier, there is no evidence Applicant's parents or sister are agents of a foreign power, such as the Pakistani government or military. Applicant's father has been retired from the military since 1979, over 24 years. There is no evidence Applicant's parents or sister have ever received undue attention from the Pakistani government in the 14-year-period Applicant has held a security clearance. Furthermore, in view of Applicant's lack of property interests in Pakistan, his residence in the U.S. since 1980, his education in the U.S., his naturalization as a U.S. citizen and marriage to a U.S. citizen in 1984, the fact he has held a security clearance while working for the predecessor to his current employer or his current employer since 1989, coupled with Applicant's excellent work record highlighted by his security vigilance over the years, there is little risk he will be susceptible to foreign influence.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (foreign influence, Guideline B): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the 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 a security clearance for Applicant.

Paul J. Mason

Administrative Judge