

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: This 37-year-old engineer was born in Pakistan in 1967. He came to the U.S. in 1987 to pursue his education. He became a U.S. citizen in 1996, and received a BSEE in 2000. He has been married twice, currently to a citizen of the U.K. who is becoming a U.S. citizen. His children are U.S. citizens. He has relatives in Pakistan, but all of his close family members now reside in the U.S. Applicant is committed to U.S. interests and will report any efforts to persuade him to reveal classified information (GX 3). He did not encourage his brother to remain in the U.S. after his visa expired. Mitigation has been established. Clearance is granted.

CASENO: 02-24216.h1

DATE: 01/13/2005

DATE: January 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24216

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 37-year-old engineer was born in Pakistan in 1967. He came to the U.S. in 1987 to pursue his education. He became a U.S. citizen in 1996, and received a BSEE in 2000. He has been married twice, currently to a citizen of the U.K. who is becoming a U.S. citizen. His children are U.S. citizens. He has relatives in Pakistan, but all of his close family members now reside in the U.S. Applicant is committed to U.S. interests and will report any efforts to persuade him to reveal classified information (GX 3). He did not encourage his brother to remain in the U.S. after his visa expired. Mitigation has been established. Clearance is granted.

HISTORY OF THE CASE

On March 3, 2004, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On March 29, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on July 15, 2004. A Notice of Hearing was issued on August 3, 2004, setting the hearing for August 24, 2004. At the hearing, the Government introduced five exhibits (GX 1 - 5). Applicant testified and introduced two exhibits (AX A and B). A timely post hearing exhibit was submitted on September 14, 2004. All exhibits were admitted as marked, without objection. The transcript was received at DOHA on September 7, 2004.

FINDINGS OF FACT

Applicant is a 37-year-old engineer for a defense contractor. The March 3, 2004 SOR contains seven allegations under Guideline B (Foreign Influence) and one allegation under Guideline E (Personal Conduct). In his May 1, 2004 Response to the SOR, Applicant *admits* allegations 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g., with explanations. He denies allegation 1.a. and 2.a. The admitted parts of the allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's father and mother are citizens of Pakistan, now residing in the United States with Resident Alien status, with Green Cards. They plan to apply for U.S. citizenship once they have been here long enough. Since they are not yet Americans, they use their Pakistan passports to return to Pakistan periodically for medical care, which for them is less expensive than in the U.S.

1.b. - Applicant's wife is a citizen of the United Kingdom and resides with Applicant in the U.S. She has begun the application process for American citizenship. She is a housewife and full-time mother.

1.c. - Applicant's brother is a citizen of Pakistan currently residing in the U.S. Applicant has signed documents as his brother's sponsor, to enable him to become a U.S. permanent resident alien. The application was signed before the brother's visa expired and his stay here became illegal. Applicant informed the Defense Security Service (DSS) agent of this situation (GX 2).

1.d. - Applicant's sister and her family are citizens of Pakistan, currently residing in that country. Applicant has applied for immigrant visas for his sister and her family to emigrate to the U.S. The sister is a housewife and her husband owns a small business. They communicate about every four months.

1.e. - Applicant had about \$200.00 in a small bank account in Pakistan for the past ten years. The account brings little return and he has begun the process of closing it.

1.f. - Applicant traveled to Pakistan on the following dates: February 5, 1992 to April 9, 1992; December 15, 1993 to January 14, 1994; December 10, 1997 to December 31, 1997; and January 1, 2002 to January 18, 2002. These visits occurred before his parents moved to the United States. He never did any business while in Pakistan.

1.g. - Applicant's mother-in-law and father-in-law are citizens of Pakistan and currently reside in the United Kingdom. They are long term residents of the United Kingdom and operate a small business there. All of their children, including Applicant's wife, were born in the U.K.. None of them have any connection with the government of Pakistan.

Guideline E (Personal Conduct)

2.a. - Applicant did not encourage his brother to overstay his visa. Applicant's action in sponsoring his brother to gain permanent legal status occurred before the brother's stay became illegal. Applicant did voluntarily inform the DSS agent of his brother's illegal status.

A friend and co-worker who has known Applicant for 10 years sees him as a man who is "honest and of good character" (AX C at page 3). Another person who has worked with Applicant since 2000 considers him to be a "very honest and trustworthy individual" and a "valuable asset within the defense industry" (AX C at page 4).

Applicant has spent about one-half his life in the U.S. and takes his oath of allegiance seriously. The lack of any suggestion of a foreign preference (Guideline C is not mentioned in the SOR) reinforces Applicant's statement that he would place U.S. interests first and foremost if ever asked to act against those interests.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Guideline B (Foreign Influence) - SOR 1.a and 1.b. -This concern deals with Applicant's relatives in Pakistan and his relationship with them. Since this adjudication began, Applicant's parents have moved to the United States and are in the process of becoming naturalized U.S. citizens. His wife, is a citizen of the U.K. residing in the U.S., and in the process of becoming a U.S. citizen (Tr at 16). These are strong indicators of his family becoming more closely tied to American society. SOR 1.c. -The situation with Applicant's brother becoming an illegal alien when his visa expired is a problem for the brother more than Applicant. Applicant acted legally in seeking permanent status for his brother, who had been here legally, and it was Applicant who revealed his brother's illegal status to DSS during the interview (Tr at 28).

SOR 1.d. - The presence of Applicant's sister and brother-in-law in Pakistan is not disputed. Applicant's contact appears to be about every four months by telephone. He has sponsored them for a Green Card, indicating an interest by these relatives to emigrate to the U.S. There is no suggestion of involvement with the Pakistan government or any interest by that government in Applicant.

SOR 1.e. - The bank account in Pakistan (\$200) was always small and relatively unproductive. Applicant owns a house in the U.S. worth about \$275,000, a savings account of about \$78,000 and a 401K account (Tr at 27). Applicant has sent a letter to the bank in Pakistan asking that the account be closed and the proceeds sent to him in the U.S. (AX C at page

2).

SOR 1.f. - Applicant's travels to Pakistan were to see his parents. They now reside in the U.S.

SOR 1.g. - His in-laws still reside in the U.K. and the relationship is not close enough to suggest that a risk exists.

A security risk may exist when an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Condition - 1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Condition - 1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk.

Guideline E (Personal Conduct) - 2.a. - The concern here is that Applicant somehow showed poor judgment by sponsoring his brother for resident alien status and the brother subsequently overstayed his visa, there by becoming an illegal alien. Applicant encouraged his brother to go back to Pakistan and try again (Tr at 17). In the absence of any evidence of advance planning or even encouragement by Applicant, the illegal conduct by his brother does not show any questionable conduct by Applicant. If there is a concern that the brother now might do something else illegal or improper and seek to persuade Applicant to reveal classified information, the fact that Applicant revealed his brother's misconduct to DSS makes a strong case that he can be relied upon to support U.S. security interests.

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern:

None that are supported by the overall evidence of record.

Applicant has spent most of his adult life in the U.S. He considers himself to be an American and much of his professional career has been in support of U.S. military and security interests. He votes in U.S. elections (Tr at 27). Nothing he has done since emigrating to the U.S. suggests any lingering feelings or preference for Pakistan (Tr at 27 - 29). To the contrary, he is clear about why he prefers his life in the U.S. over that of Pakistan (Tr at 33) and his intention to support only U.S. interests.

Letters of praise from coworkers, see Applicant as dedicated, honest, and trustworthy. I find these letters to be on point and persuasive as to Applicant's character, dedication, and integrity.

While relatives in any foreign country may present a risk, this factor is not an automatic bar to holding a security clearance. Fairness and common sense require an analysis of the entire record and an overall common sense determination. Pakistan is a close ally of the U.S. in a troubled part of the world (GX 5), but is not generally noted as being active in espionage in the U.S.

The lack of any improper contact in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that should be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is to the United States only. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for Pakistan, and (2) there is minimal risk that Applicant's relatives will be pressured into contacting Applicant for improper purposes. In addition, based on his long history of residence in and dedicated service to this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 2.a. 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.

Barry M. Sax

Administrative Judge