

DATE: June 17, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-32673

## DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

### APPEARANCES

#### FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is the executive assistant to the president of a federal contractor. She seeks a security clearance so she will be able to handle any classified material that will cross her desk when used in the course of bidding on or working on government construction contracts. Applicant is an American citizen for the past 35 years. She was born in Germany and has siblings and other family members there whom she visits periodically. Her present husband is a citizen of Pakistan and a resident alien of the United States. He worked as a Pakistani civil servant for ten years until 1969, then worked for the World Bank until 1989, when he retired. Subsequently, he worked as a consultant on financial issues to the Pakistani government until retiring in 1996 to the U.S. Applicant successfully mitigated all foreign influence concerns. Clearance is granted.

### STATEMENT OF THE CASE

On February 19, 2003, the Defense Office of Hearings and Appeals (DOHA), under 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. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated February 21, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was originally assigned to Administrative Judge Roger Willmeth on March 26, 2003. It was reassigned to Administrative Judge Matthew E. Malone on March 26, 2003. The case was reassigned to me on March 28, 2003 due to caseload considerations. A Notice of Hearing was issued on April 17, 2003, setting the hearing for May 19, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to

grant Applicant's security clearance. The Government presented eight exhibits which were admitted into evidence. Applicant appeared and testified, but did not offer any documentary evidence. I received the transcript (Tr.) of the hearing on May 23, 2003.

### **FINDINGS OF FACT**

Applicant admitted all of the allegations contained in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. of the SOR. 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 the same, I make the following additional findings of fact:

Applicant is a 65-year-old naturalized U.S. citizen. She was naturalized 35 years ago. She came to the U.S. with her first husband, from whom she is divorced. In 1989 she married a Pakistani citizen who worked for the World Bank in a professional position. She has a sister who is 67-years-old and lives in Germany. Her sister is a florist. Her brother is 60-years-old and is retired in Germany. He did not work for the German government before his retirement. Applicant works as the executive assistant to the chief executive officer of a government contractor who does electrical work on government buildings. She has held that position for 34 years. She also helps take care of the Alzheimer-stricken mother of her employer. Her parents are deceased. (Tr. 14-19)

Applicant's present husband kept his Pakistani citizenship while working for the World Bank. Doing that allowed him to return to Pakistan at least annually at the expense of the World Bank to visit his family, and allowed the World Bank to show its employee population was geographically and ethnically diverse. He attempted to apply for U.S. citizenship recently, but the long lines at the Immigration office deterred him. Applicant said her husband has become a virtual recluse at their home in part due to health problems he currently suffers. Applicant's husband worked from 1959 to 1969 for the Pakistani civil service, then went to work for the World Bank for 20 years, retiring in 1989. During that time, he lived in the U.S. for part of his term of employment with the World Bank. He then consulted on economic matters with the Pakistani government from 1989 until 1995. Her husband owned a home in Pakistan and she visited him there in 1989, 1991, 1992, and 1993. He visited Applicant in the U.S. after they married in 1989. She did not like the climate there and never intended to live there. Her husband immigrated to the U.S. in 1996 and they live together here. He has no financial interest in Pakistan, does not own a home or real estate in Pakistan or anywhere else in that region of the world, and no other connections to Pakistan. Applicant's husband has two adult children who live in the United States and are American citizens. Her husband's two siblings were in private business in Pakistan, and are now retired. (Item 3 at 1-5; Tr.19-27, 32-34, 39)

Applicant returned from a trip to Germany on May 10, 2003, after a nine day trip. She traveled there to visit her sister. She does not see her brother that often. Applicant also traveled to Germany in 1997 and 2001 for the purpose of visiting her family. Applicant does not own any property in Germany. Applicant speaks with her sister about every three weeks. Applicant has two nieces, one a housewife in Germany, and the other a flight attendant with Lufthansa Airlines. Applicant communicates with the flight attendant niece frequently during the year. Applicant has a friend in Germany who attended kindergarten with her and is now a retired professor. Applicant communicates with her friend periodically. (Tr. 18, 28-36)

Applicant has not voted in any foreign elections and has lived in the United States since 1969. She has two grown children living in the United States and who are American citizens. (Item 2 at 2; Tr. 15, 28)

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 B: Foreign Influence**

The Concern: 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 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. Directive, ¶ E2.A2.1.1.

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

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. Directive, ¶ E2.A2.1.2.1.

Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. Directive, ¶ E2.A2.1.2.2.

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

Conditions that could mitigate security concerns include:

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 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 United States. Directive, ¶ E2.A2.1.3.1.

### **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

This case involves a person who is an executive assistant to the company president who now seeks a security clearance because of what documents she might or will see or will see when they cross her desk in the company which bids on contracts with and does work for the government. The Government presented substantial evidence by Applicant's admissions, sworn statements, and her security clearance application that she has siblings living in Germany, and her current husband worked for the Pakistani government over 32 years ago and presently is a citizen of Pakistan while living in the United States with Applicant. Disqualifying Conditions (DC) 1, 2, and 3 apply.

After evaluating all the evidence, I conclude that Mitigating Condition (MC) 1 applies. Applicant has four relatives who are German citizens, none of whom work for the German government. Her siblings are retired from employment, and her nieces are employed, one as a homemaker and the other in the premier German airline. They are not in a position to exploit Applicant to force her to choose between her family ties to them and her loyalty to the United States. Applicant's husband was a civil servant over 32 years ago in Pakistan, but there is no evidence he has any connection with the present government, or financial ties to that country. He is retired from the work force and has a respectable pension upon which to live in the United States with Applicant. He worked for the World Bank, a respected international

organization of which the United States is a member and headquartered in the United States. Applicant's husband does not appear to be in a position to exploit Applicant to disclosed classified information she may see in the course of her employment. Applicant has worked at the same company since 1969 and appears to be trusted by the chief executive officer of that company.

Applicant's connections to the United States are strong, as are those of her husband. Both families from their prior marriages are citizens of the United States and live here. Applicant and her husband, and her siblings, are all over 60 years in age, and are not likely to engage in subversive activities or coerce Applicant because they are retired on pensions or engaged in private industry. The potential for foreign influence on Applicant is negligible or non-existent, in my opinion.

After considering all of the evidence, and looking at the total person and facts surrounding this case, I can only conclude that the MC prevail. Applicant's testimony was credible as I observed her demeanor and the sincerity and openness of her statements. I believed her explanations responding to the allegations in the SOR. I conclude it is clearly consistent with national security considerations to grant Applicant's security clearance.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

### **DECISION**

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

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Philip S. Howe

Administrative Judge