

KEYWORD: Foreign Influence

DIGEST: Applicant is a 49-year-old male who has been employed by a defense contractor since October 2001. He was born in Pakistan and became a naturalized United States citizen in 1999. Remaining in Pakistan are his mother and five brothers. Of his siblings, one serves in a branch of the Pakistan military and another is on the staff of a local government official. Applicant has failed to mitigate resulting security concerns. Clearance is denied.

CASENO: 04-00286.h1

DATE: 07/13/2005

DATE: July 13, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00286

**DECISION OF ADMINISTRATIVE JUDGE**

**ARTHUR E. MARSHALL, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a 49-year-old male who has been employed by a defense contractor since October 2001. Born and educated in Pakistan, Applicant and his family settled in the United States in 1994 and he became a naturalized United States citizen in 1999. Remaining in Pakistan are his aged mother and five brothers, one of whom is a civil servant working for a local government official. Applicant failed to mitigate security concerns arising from this one brother's government position, as well as with regard to the extent of Applicant's overall contact with his other siblings. Clearance is denied.

## **STATEMENT OF THE CASE**

On July 16, 2004, 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). That SOR detailed why, pursuant to Guideline B (Foreign Influence), it could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In response, by letter of August 12, 2004, Applicant admitted to the four allegations contained in the SOR and requested an administrative determination based on the submissions.

The Government's case was submitted on February 9, 2005, and a complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant signed for a copy of the FORM on March 6, 2005, and chose not to submit any additional materials. I was assigned this case on May 11, 2005.

## **FINDINGS OF FACT**

Applicant has admitted to the four allegations set forth in the SOR. 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 49-year-old male who has been employed by a defense contractor since October 2001. Born, raised, and educated in Pakistan, he married a fellow Pakistan native in 1989 and the couple had their first child in 1990. Seeking a better future, they emigrated to the United States in 1991. Having found no employment and with his wife in ill health, they returned to Pakistan a year later. The family again emigrated to the United States in 1994. This time, Applicant found a job as a machine operator and the family remained in the United States. Applicant became a naturalized U.S. citizen in 1999; his wife and eldest daughter are also naturalized U.S. citizens. The couple's youngest children, born in the U.S., are citizens by birth. Since 1994, Applicant has returned to Pakistan twice: for a 1996 wedding and a 2002 pleasure trip.

Remaining behind in Pakistan as citizens and residents are Applicant's mother and five brothers. His mother is 69 years old. Although he no longer has any real connection to her current activities, he does call once in a while to inquire about her health. Her support and care is provided by his brothers in Pakistan, who take turns having her stay with them. The one exception to this rotation of maternal care is a brother who is employed by a branch of the Pakistan military. Neither Applicant's mother nor his brothers maintain contact with this sibling. Indeed, owing to a family dispute, Applicant has not had any contact with this brother in over a decade. Further, he has no idea where this brother lives, knows nothing of his brother's family, and does not know the nature of his work.

A second brother is a civil servant, working in a white collar capacity on the staff of a Pakistani government official. Applicant does not know anything about his brother's work, nor have they discussed his work. None of his remaining three brothers are associated with a military, paramilitary, governmental, or non-governmental organization.

Applicant's motivation in emigrating to this country was his need for new challenges and opportunities. He loves the United States and holds it above his family back in Pakistan. He has built a comfortable life in the U.S. and he has high hopes for his children. He has no intention to return to his life in Pakistan because he feels that the U.S. is a better place to raise his family.

## **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, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance<sup>(2)</sup> and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(3)</sup> Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

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

**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 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.**<sup>(4)</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed below.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegation set forth in the SOR:

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that his mother and five brothers are citizens and residents of a foreign country, specifically, Pakistan. The citizenship and current residency of these six immediate family members raises a security concern with regard to Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n immediate family member, or a person to whom the individual has close tiers of affection or obligation, is a citizen of, or resident or present in, a foreign country*).

Although Applicant's mother and three of her sons have no apparent relationship with the Pakistan government, two brothers do. One brother may be discounted because even though he serves with a branch of the Pakistan military, Applicant has demonstrated that he and the rest of his family are purposefully estranged from this sibling. More problematic is a second brother who currently serves a government official and is a member of the civil service. Based on this limited information, a finding cannot be made that this sibling is not necessarily an agent of a foreign power. Consequentially, Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*[a] determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sons), 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*) does not apply.

Contact with Applicant's military sibling has already been noted. Applicant has had no contact with this brother for over a decade and his family is equally estranged from this person it considers to be *persona non grata*. Under these circumstances, mitigation has been established with regard to this sibling pursuant to FI MC E2.A2.1.3.3 (*[c]ontact and correspondence with foreign citizens are casual and infrequent*). Therefore, I find in Applicant's favor with regard to subparagraph 1.c.

The same mitigation, however, cannot be found with regard to the rest of the family. Applicant concedes that he has visited Pakistan twice over the past decade, including one trip specifically made to attend a family wedding. Moreover, although he characterizes his contact with his mother as being otherwise limited to telephone calls placed "once in a while" to ask about her health, such concerns are understandably not casual. Furthermore, based on the fact that his

mother is rotated among the homes of his siblings, it is logical to assume that these calls also foster contact with his brothers and their families.<sup>(5)</sup> Applicant, however, has failed to describe or demonstrate the extent, frequency, and nature of such fraternal contact. Having failed to further expound upon these relationships so as to permit a clear basis upon which to assess their contact, I cannot find that FI MC E2.A2.1.3.3 applies to his mother or his remaining four siblings. Additionally, I find subparagraphs 1.a, 1.b, and 1.d of the SOR for the Government. No other mitigating conditions are applicable.

Also relevant is the country at issue. Although Pakistan is aiding the United States in its fight against international terrorism, it remains a dangerous place. Sectarian and separatist terrorists within Pakistan continue to target American citizens, not just at official U.S. facilities, but also at more vulnerable targets, such as hotels, clubs, restaurants, places of worship, schools, and outdoor event venues.<sup>(6)</sup> Bombings, assassinations, and kidnaping continue to occur throughout the country.<sup>(7)</sup> Western interests are similarly targeted.<sup>(8)</sup> The fact that his mother and siblings are Pakistani citizens and residents place Applicant in a position of vulnerability to be influenced by coercive or noncoercive means; this vulnerability is compounded by the fact that one brother is a civil servant and works directly for a political figure. In such cases, and without more persuasive argument from the Applicant, this vulnerability is sufficient to deny a security clearance.<sup>(9)</sup>

I have considered the record evidence and considered the Applicant using the "whole person" concept. I am particularly struck by Applicant's dedication to this country and his hopes for his children. Although there is no basis in the record to question Applicant's character and integrity, the DOHA Appeal Board has recognized that "a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk."<sup>(10)</sup> By failing to more fully address or explain his familial relationships and the extent and frequency of his contact with his family in Pakistan in a such a way as to mitigate concerns, Applicant has failed to carry his burden and assuage the doubts they raise. Further, inasmuch as any doubts must be resolved in favor of the national security, not the applicant, I find against Applicant with regard to the allegation set forth at paragraph 1 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c For the Applicant

Subparagraph 1.d Against 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 a security clearance for Applicant.

Arthur E. Marshall, Jr

Administrative Judge

1. <sup>0</sup> The government submitted 8 items in support of its case.

2. <sup>0</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

3. <sup>0</sup> *Id.*, at 531.

4. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

5. By way of example, the fact that Applicant has never had a conversation with the brother who works for a government official regarding that brother's work, Applicant does not necessarily negate the probability that other conversations have transpired, either directly or incidental to his calls to their mother. *See*, Applicant's Response Response to the SOR at 2.

6. Item 8 ("Travel Warning: Pakistan," U.S. Department of State, dated September 24, 2004).

7. *Id.*

8. Item 7 ("Consular Information Sheet," U.S. Department of State, dated February 9, 2005).

9. "The Appeals Board has held all that is required to be shown by the Government is evidence that Applicant

is in a situation that poses a security risk." ISCR Case No. 01-26893 (October 16, 2002), at p. 8.

10. *Id.*