

KEYWORD: Foreign Influence

DIGEST: Although applicant has lived in the United States since 1981, he has numerous immediate family members who are citizens and/or residents of various foreign countries, including Afghanistan and Pakistan. Clearance is denied.

CASENO: 04-01918.h1

DATE: 07/29/2005

DATE: July 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-01918

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

## **FOR APPLICANT**

Personal Representative [\(1\)](#)

### **SYNOPSIS**

Although applicant has lived in the United States since 1981, he has numerous immediate family members who are citizens and/or residents of various foreign countries, including Afghanistan and Pakistan. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 14, 2005, 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 administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on March 1, 2005. The case was assigned to the undersigned on March 25, 2005. A Notice of Hearing was issued on June 8, 2005, and the hearing was held on July 13, 2005. The transcript was received on July 21, 2005.

### **FINDINGS OF FACT**

Applicant is 49 years of age.

Applicant was born and raised in Afghanistan. In 1981, he moved to the United States. In 1995, he became a United States citizen.

Applicant and his current wife were boyfriend-girlfriend when they lived in Afghanistan. They had a child in Afghanistan the 1970s. The wife, to whom applicant has been married since 1984, moved to the United States a few years after applicant did, leaving their child with a relative in Afghanistan. To applicant's knowledge, this child now lives in Pakistan. Applicant has not had any contact with him in two years, and does not know where he is currently residing.

Applicant's wife became a United States citizen in 1989. They had four additional children, all of whom were born in the United States and live here (TR at 26-27).

Applicant's mother and father are citizens of Afghanistan. They live most of the year in Pakistan; the remainder of the year is spent in Afghanistan. The frequency of their telephone contact varies. However, they remain in close and frequent contact. Applicant last saw his parents in 1993 when he visited them in Pakistan.

Applicant has six brothers and two sisters. One sister lives in Canada. Applicant is not sure of her current citizenship status. The other sister is a citizen and resident of Afghanistan. Applicant's brothers are spread around the world. Brother 1 lives in the United States. He has a green card, but is still a citizen of Afghanistan. Brother 2 is a citizen and resident of Germany; Brother 3 is a citizen and resident of the Netherlands; Brother 4 resides in Canada with unknown citizenship; Brother 5 is a citizen and resident of Afghanistan; and Brother 6 is a citizen of Afghanistan and a resident of Pakistan. Applicant speaks to his siblings with varying frequency. He maintains frequent and close contact with most of them. To applicant's knowledge, none of his immediate family members works for a foreign government.

## CONCLUSIONS

The evidence establishes that applicant's parents, eight siblings, and one of his children are citizens and/or residents of foreign countries, including Afghanistan and Pakistan. This fact requires application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

Once the Government established the applicability of Disqualifying Condition E2.A2.1.2.1, the burden shifted to applicant to establish that Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member is not*

*an agent 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) is applicable. Applicant failed to meet his burden.*

Although applicant appears to be a decent, loyal American, given the citizenships and residences of his parents, siblings, and child, it would be unreasonable to conclude that these immediate family members are not in a position to be exploited by a foreign power in a way that could force applicant to choose between loyalty to the United States and loyalty to one or more of these immediate family members. Based on the foregoing, Guideline B is found against applicant.

### **FORMAL FINDINGS**

GUIDELINE B: 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 or continue a security clearance for applicant.

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Joseph Testan

Administrative Judge

1. Applicant's son acted as his personal representative. Because disclosing the son's name could lead to the identity of applicant, the son's name is omitted.