

KEYWORD: Foreign Influence

DIGEST: Applicant, born in Pakistan, came to the United States in 1980 and became a United States citizen in 1991. His wife and two children are also United States citizens. His father and one sister are citizens and residents of the United States. He also has a brother and sister who reside in the United States, but are citizens of Pakistan. Applicant's sister and step sister are citizens and residents of Pakistan. His sister-in-law is a citizen of France temporarily residing in the People's Republic of China (PRC). Applicant's strong attachment to the United States and his family here and his long successful history in the United States make it unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASENO: 04-02257.h1

DATE: 11/03/2005

DATE: November 3, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02257

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, born in Pakistan, came to the United States in 1980 and became a United States citizen in 1991. His wife and two children are also United States citizens. His father and one sister are citizens and residents of the United States. He also has a brother and sister who reside in the United States, but are citizens of Pakistan. Applicant's sister and step sister are citizens and residents of Pakistan. His sister-in-law is a citizen of France temporarily residing in the People's Republic of China (PRC). Applicant's strong attachment to the United States and his family here and his long successful history in the United States make it unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated March 1, 2005, 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant filed a notarized response, dated March 17, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On May 25, 2005, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice, dated July 19, 2005, a hearing was held on August 17, 2005.

At the hearing, Department Counsel offered five documentary exhibits (Government Exhibits 1-5) and no witnesses were called. Applicant offered 10 documentary exhibits (Exhibits A-J) and offered his testimony, and that of five other witnesses. All of the documents were admitted without objection. The transcript (Tr) was received on August 29, 2005.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains five allegations, 1.a., through 1.e., under Guideline B. Applicant admitted all of the facts upon which the SOR allegations were made with a partial exception for 1.c. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant and the other witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 48 years old. He is employed by a defense contractor as a Principal Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector. He received a Bachelors degree in mechanical engineering from a United States university in 1981.

Applicant was born in Pakistan. In 1976, when he was 19, he moved to England. Four years later, in 1980, he moved to the United States, and he has lived here for the past 25 years. He became a naturalized United States citizen in 1991. Applicant is married, and he and his wife have a son and a daughter, both of whom were born in the United States and are solely United States citizens.

Guideline B (Foreign Influence)

1.a. Applicant's sister and step sister are citizens and residents of Pakistan. They are both housewives, not working outside of the home, and they have never worked for the Pakistani Government. The husbands of both women have their own businesses, and they have no affiliation with the Pakistani Government.

1.b. Applicant's sister-in-law is a citizen of France and currently resides in the PRC. She is not employed in the PRC. She lives there with her husband, who works for a French company and is assigned there until 2006. The company is not a defense company, and it is not involved with the Government of the PRC. Applicant has minimal contact with his sister-in-law and her husband.

1.c. Applicant's wife, was born in France. She moved to the United States in 1986 and became a permanent resident in 1988. At the time Applicant completed his SCA, his wife was still a citizen of France. In February 2004, she became a United States citizen.

1.d. Applicant traveled to Pakistan on two occasions in 1997. These trips were to make sure that his mother, who had become extremely ill with a brain hemorrhage while visiting Pakistan, was receiving proper care and then to bring her back to the United States. His mother ultimately died and was buried in the United States. Applicant has not returned to Pakistan since 1997 and has no intentions of traveling there in the future.

1.e. In 2002, Applicant traveled to Egypt and Syria. His sole purpose for this trip was to accompany his elderly father who wanted to visit these two countries. Applicant has no relatives or other contacts in either of these countries and has no plans to visit either country in the future.

Applicant's parents became permanent residents in the United States in 1991. As discussed above, his mother is deceased, but his father, who is a United States citizen, resides in the United States with Applicant. Applicant has a brother and three sisters, who are residents of the United States; one of his sisters is a United States citizen.

Applicant has never voted in an election in Pakistan nor does he have any current or future financial interest in Pakistan.

At the hearing, Applicant's supervisor and a neighbor testified that Applicant is an honorable and truthful individual. His wife also testified about her minimal contact with her sister and brother -in-law in the PRC, and her strong devotion to the United States.

Finally, Applicant submitted letters from his supervisor, co-workers, and neighbors, and they all spoke extremely highly of him (Exhibit J). He also introduced his most recent Employee Voluntary Investment Plan showing that he has approximately \$250,000 in his retirement account.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an

individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

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.

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. of Enclosure 2*).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531

(1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence).

Applicant's sister and step-sister are citizens and residents of Pakistan, and his sister-in-law is a citizen of France and temporarily resides in PRC. The citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of Applicant's family members, who are citizens and residents of countries other than the United States comes within Disqualifying Condition (DC) E2.A2.1.2.1, immediate family members, who are citizens of, or resident in, a foreign country.

The primary factors in mitigation that I have considered include: Applicant's long and successful history since coming to the United States in 1980 and becoming a United States citizen in 1991, his wife becoming a citizen in 2004; his devotion to his wife and his children, who are also United States citizens; his other family members in the United States, the lack of government involvement of his family members in other countries, and Applicant's strong feelings concerning his devotion to this country. Based on the nature of the overall record and the totality of the evidence, I have determined that his family in Pakistan and the PRC do not constitute an unacceptable security risk, and Mitigating Condition (MC) E2.A2.1.3.1, a determination that the immediate family members 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 persons involved and the United States, applies.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it and would report the incident to the proper authorities.

On balance, it is concluded that Applicant has overcome the Government's case opposing his request for a security clearance.

FORMAL FINDINGS

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

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.

Martin H. Mogul

Administrative Judge