

KEYWORD: Foreign Influence

DIGEST: The Applicant's brother, sister and sister-in-law are citizens of and reside in Pakistan. All three have applied for and will soon emigrate to the U.S. His brother is a businessman. His brother held a local government position in the late 1990s, but has held no such position since then. The Applicant's sister and sister-in-law are housewives. In the last 24 years, the Applicant has given his foreign relatives a total of about \$70,000. He recently deeded away property worth between \$20,000 and \$30,000 to his brother. The Applicant's net worth in the U.S. is between \$3,000,000 and \$5,000,000. The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. Mitigation is shown. Clearance is granted.

CASENO: 04-04123.h1

DATE: 03/14/2005

DATE: March 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04123

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Richard Moorhouse, Esquire, Applicant's Counsel

Pang Khou Yang, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant's brother, sister and sister-in-law are citizens of and reside in Pakistan. All three have applied for and will soon emigrate to the U.S. His brother is a businessman. His brother held a local government position in the late 1990s, but has held no such position since then. The Applicant's sister and sister-in-law are housewives. In the last 24 years, the Applicant has given his foreign relatives a total of about \$70,000. He recently deeded away property worth between \$20,000 and \$30,000 to his brother. The Applicant's net worth in the U.S. is between \$3,000,000 and \$5,000,000. The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On October 15, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about November 4, 2004.

The case was received by the undersigned on January 14, 2005. A notice of hearing was issued on January 20, 2005, and the case was heard on February 16, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called two witnesses to testify on his behalf. The transcript was received on February 28, 2005. The issue raised here is whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 47 years of age, and is the President and Chief Executive Officer (CEO) of a defense contractor that seeks a security clearance on behalf of the Applicant. 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.

Guideline B - Foreign Influence

The Applicant came from Pakistan in 1980 (Transcript (TR) at page 24 at line 23 to page 25 line 3). He became a naturalized citizen in 1991 (TR at page 28 lines 10~13, and Government Exhibit (GX) 1 at page 1). In 2000, the Applicant formed his own company, of which he is the President and CEO (TR at page 4 line 22 to page 5 line 1, and at page 29 lines 3~8).

1.a. and 1.d. The Applicant's brother is a citizen of and resides in Pakistan (TR at page 45 line 15 to page 48 line 2). His brother was elected to a local government position in 1996 or 1997, but that position was "dissolved" in 1998 with a change in the national regime (TR at page 48 lines 2~16, and at page 70 line 25 to page 72 line 1). The Applicant's brother runs "a lumber and steel business" (TR at page 49 lines 3~9). This brother is not a target for coercion; but should such a situation arise, the Applicant would report it to his security officer (TR at page 48 line 22 to page 49 line 2, and at page 63 line 19 to page 65 line 9). The Applicant's brother has applied to emigrate to the U.S., which should occur in 2005 (TR at page 78 lines 1~7, and Applicant's Exhibit (AppX) D at enclosure 1).

1.b. The Applicant's sister is a citizen of and resides in Pakistan (TR at page 49 line 14 to page 50 lines 14~18). She is a housewife (*Id*). The Applicant's sister has also applied to emigrate to the U.S. (TR at page 50 lines 12~14, and AppX D at enclosure 2). She is not a target for coercion, and the Applicant would report such an attempt to his security officer (TR at page 63 line 19 to page 65 line 9).

1.c. The Applicant's sister-in-law is a citizen of and resides in Pakistan (TR at page 50 line 15 to page 51 line 3). She is also a housewife (*Id*). The Applicant's sister-in-law has applied to emigrate to the U.S. (TR at page 50 lines 12~14, and

AppX D at enclosure 3). She is not a target for coercion, and the Applicant would report such an attempt to his security officer (TR at page 63 line 19 to page 65 line 9).

1.e.~1.h. The Applicant is in weekly telephone contact with his brother and sister (TR at page 51 line 20 to page 52 line 17). The subject of the Applicant's employment has never been a part of their conversations (*Id*). Over the last 24 years, the Applicant has provided monetary gifts totaling about \$70,000 to his before mentioned relatives (TR at page 52 line 18 to page 53 line 23, and at page 70 lines 17~24). The Applicant's net worth in the U.S. is between \$3,000,000 and \$5,000,000 (TR at page 56 lines 19~22, *see also* AppX B). He has recently transferred property worth between \$20,000 and \$30,000 to his brother to avoid having any foreign financial interests (TR at page 53 to page 55 line 9). The Applicant traveled to Pakistan to visit his family in 1987 or 1988, 1992 and 1998 (TR at page 56 line 23 to page 59 line 3, and at page 78 lines 8~19). He plans no further trips to Pakistan, as his family members will all soon emigrate to the U.S. (*Id*).

Mitigation

His contemporaries in the defense sector and in his industry think most highly of the Applicant (TR at page 80 line 4 to page 85 line 25, at page 87 line 5 to page 96 line 22, and AppX D at enclosure 4).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.

- b. Frequency and recency of the conduct.

c. Age and maturity of the applicant.

d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

When the Applicant became a U.S. citizen in 1991, he renounced his Pakistani citizenship. He founded his own company, which contributes to the defense sector, and has established a personal net worth of between \$3,000,000 and \$5,000,000. He has thus realized the American dream by contributing his talents to his adopted land, and at the same time establishing personal wealth.

The Applicant's brother, sister and sister-in-law, however, are citizens of and live in Pakistan. The second disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." All of these subject relations are awaiting the issuance of their green cards and will soon thereafter emigrate to the U.S. Furthermore, none of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Pakistan can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigation condition is therefore applicable as "the immediate family members . . . 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."

The Applicant has no financial interests in Pakistan, and his telephonic contacts with his family will end with their pending immigration. Furthermore, he plans no further trips to the country of his birth. Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola
Administrative Judge