

KEYWORD: Foreign Influence

DIGEST: Applicant's mother is a citizen of Pakistan residing permanently in the U.S. His mother-in-law and five of his nine siblings are citizens and residents of Pakistan. He has mitigated the security concern based on foreign influence. Clearance is granted.

CASE NO: 05-04231.h1

DATE: 05/11/2006

DATE: May 11, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-04231

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's mother is a citizen of Pakistan residing permanently in the U.S. His mother-in-law and five of his nine siblings are citizens and residents of Pakistan. He has mitigated the security concern based on foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. The SOR alleges security concerns under Guideline B (Foreign Influence). It alleges Applicant's wife is a citizen of Pakistan residing with him in the U.S. (§ 1.a.), his mother is a citizen of Pakistan residing with him in the U.S. (§ 1.b.), his four brothers and one sister are citizens and residents of Pakistan (§ 1.c.), one brother is an employee of the Pakistan Atomic Energy Commission (§ 1.d.), and his mother-in-law is a citizen and resident of Pakistan (§ 1.e.).

Applicant answered the SOR in writing on October 3, 2005, denied the allegation in § 1.a., admitted the remaining allegations, offered explanations, and requested a hearing. The case was assigned to me on February 14, 2006, and the hearing was held as scheduled on March 22, 2006. DOHA received the transcript (Tr.) on March 29, 2006.

### **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the

following findings:

Applicant is a 35-year-old senior systems engineer for a defense contractor. He was born in Pakistan. He came to the U.S. with his parents in May 1990, when they were selected to participate in a U.S. State Department diversity program.

(1) Applicant received his college education in the U.S., and he became a naturalized U.S. citizen in May 1995. (2)

Applicant has worked for his current employer since April 2002. He has never held a security clearance. (3) His colleagues and supervisors regard him as trustworthy, dedicated, thorough, and highly respected. (4)

Applicant's wife also was born in Pakistan, and she became a naturalized U.S. citizen in July 2004. (5) She is employed as a teacher at a language school, teaching the various Pakistani languages to members of the U.S. intelligence community. (6)

Applicant's mother is a 76-year-old citizen of Pakistan who is a permanent resident of the U.S. (7) She was a homemaker all of her adult life. She is nearly blind and has heart disease. She always intended to become a U.S. citizen but has been unable to complete the process because of her health. (8)

Applicant is the youngest of nine children. He has two sisters. One is a citizen and resident of the U.S. The other, 13 years older than Applicant, is the principal of a privately-run girls' secondary school in Pakistan. (9) Neither she nor her spouse has any connection with the Pakistani government.

Applicant has seven brothers. One is a citizen and resident of the U.S. Two are permanent residents of the U.S. who have applied for U.S. citizenship. Four are citizens and residents of Pakistan. Of the four in Pakistan, two are engaged in private businesses in Pakistan. (10) One, age 53, owns and operates a vegetable store; the other, age 51, a convenience store. A third brother, age 45, works for a local education agency that administers examinations. (11)

Applicant's oldest brother, age 58, is an electrical engineer, employed by the Pakistan Atomic Energy Commission. (12) He is not involved with Pakistani intelligence agencies or the armed forces. (13) They have never lived together and have nothing in common because of their age difference. (14) His brother intends to retire soon, and has already begun the administrative processing for retirement. (15) Applicant knows very little about what his oldest brother does, except that he works as an engineer in electrical generating plants. (16)

Applicant has telephonic contact with his siblings three or four times a year. He initiates the contact for his mother so she can talk with them.<sup>(17)</sup> He does not talk to two of his brothers because of one's "lack of sincerity with other family members" and the other's "behavior with other family members."<sup>(18)</sup> While Applicant did not offer details of his disapproval of his brothers' conduct, his lack of attachment to his siblings was apparent at the hearing, not only from his words but also his tone of voice and body language.

Applicant's mother-in-law is a citizen and resident of Pakistan. She has been a homemaker all her life. She intends to emigrate to the U.S. to be with her daughter. She has submitted her visa application, sponsored by her daughter, and is awaiting approval.<sup>(19)</sup>

Applicant and his wife do not have any property, bank accounts, or other assets outside the U.S.<sup>(20)</sup> Applicant does not provide any financial support to his siblings in Pakistan. Except for his oldest brother, the engineer, and the brother who works for the local education agency, none of his siblings or their spouses have any connection with the Pakistani government.<sup>(21)</sup>

Applicant visited Pakistan in 1998 to be married. He visited his in-laws in Pakistan in December 2001, and he traveled to Pakistan in October 2002 to attend his brother-in-law's funeral.<sup>(22)</sup> He testified the visits "were all basically to make my wife happy," and he has no future plans to visit Pakistan, since his mother-in-law intends to emigrate to the U.S. in the near future.<sup>(23)</sup>

Pakistan is a parliamentary democracy. It has the world's eighth largest armed forces, which are generally well trained and disciplined. Until 1990, the U.S. provided substantial military aid to Pakistan, but it was suspended as part of sanctions imposed in response to Pakistan's program to develop nuclear weapons. After September 11, 2001, the sanctions were suspended because Pakistan supported the U.S. campaign to eliminate the Taliban in Afghanistan and provided extensive support in the war on terrorism, capturing more than 600 al-Qaida members and their supporters. In addition to resuming military aid, the U.S. has increased economic assistance to Pakistan, provided debt relief, and supported education reform.<sup>(24)</sup>

Pakistan's human rights record is generally poor, although there were significant improvements in several areas. Problems continue with police abuse and killings; poor prison conditions; limitations of freedom of speech, association, religion, and movement; violations of the right to privacy; and executive pressure on the judiciary.<sup>(25)</sup>

Pakistan remains dangerous because of terrorist and insurgent activity. A number of extremist groups as well as al-Qaida and Taliban elements continue to target U.S. interests, senior Pakistani officials, and minority indigenous groups. (26) However, based on the addresses listed on Applicant's security clearance application, none of Applicant's siblings or in-laws live in the sparsely populated border areas where al-Qaida and Taliban elements exercise the most influence. (27)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1. through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1. through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President

and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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. Applicant presented evidence his wife is now a naturalized U.S. citizen. Accordingly, I conclude he has refuted the allegation in SOR ¶ 1.a., and I resolve that allegation in his favor.

"[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption regarding his mother-in-law. I conclude DC 1 is established, based on the citizenship of his mother, and the citizenship and residences of his mother-in-law, four brothers, and one sister.

A disqualifying condition (DC 3) may arise if an individual has relatives "who are connected with any foreign government." Directive ¶ E2.A2.1.2.3. I conclude DC 3 is established by evidence of Applicant's oldest brother's employment by the Pakistani Atomic Energy Commission and another brother's involvement with a local education agency in Pakistan.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, 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.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power").

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Although Applicant's mother is a citizen of Pakistan, she is not an agent of a foreign power. She resides permanently in the U.S., as insulated from the authority of the Pakistani government and the threats from insurgents and terrorists as she would be if she were a U.S. citizen. I conclude MC 1 is established for her, and I resolve SOR ¶ 1.b. in Applicant's favor.

Applicant's mother-in-law and siblings do not live in the areas where al-Qaida and Taliban elements are the most powerful. His mother-in-law is a citizen of Pakistan, but she has no connection to the government. As an elderly housewife with no government or economic prominence, she is not a likely target of anti-American or anti-government terrorism. She is not dependent on the Pakistani government. Her primary attachment is to her daughter, a citizen and resident of the U.S. She has already taken substantial steps to emigrate to the U.S. where she can join her daughter and her daughter's family. I conclude MC 1 is established for her, and I resolve SOR ¶ 1.e. in Applicant's favor.

Two of Applicant's brothers operate small business and have no connection with the Pakistani government. His Pakistani sister works in a private school, unconnected to the government. They all lead low-profile lives, minimizing their vulnerability to terrorism. I conclude MC 1 is established for these three siblings.

Two of Applicant's brothers are connected to the government, and thus fall within the broad definition of "agent of a foreign power" adopted by the Appeal Board. *See* ISCR Case No. 02-24254, 2004 WL 2152747 at \*4-5 (App. Bd. Jun. 29, 2004) (employee of foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). Thus, I conclude C 1 is not established for these two siblings.

Although Applicant's two brothers are connected to the government, they are both low-level officials, and as such they are unlikely terrorist targets. His oldest brother is employed by the Pakistan Atomic Energy Commission, but his expertise is in the generation of electrical power, not the manufacture of nuclear weapons, which was the basis of previous friction between the U.S. and Pakistan. Pakistan is closely allied with the U.S. in the war on terrorism, and is dependent on the U.S. for economic aid and military assistance. The nature of Pakistan's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Pakistan would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S.

Even in the unlikely event that Applicant's brothers and sister were subjected to duress from the Pakistani government, insurgent groups, or terrorists, it is even more unlikely he would succumb to pressure from them. Applicant has strong ties to the U.S. He is highly respected as a trustworthy, dedicated person. He was sincere, open, and honest at the hearing. His connection to his siblings is biological but not emotional. He has had little interaction with them since 1990. They are all considerably older than Applicant, ranging in age from 45 years old to 58 years old. He has severed ties with two of them. In terms of actual ties of affection or obligation, his siblings are more akin to distant uncles and an aunt than immediate family members.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). I conclude Applicant has rebutted the presumption. He has nothing in common with his siblings in Pakistan, having left them and lived separately since 1990. His infrequent contacts are initiated for his mother, and Applicant does little more than exchange pleasantries. He disdains any contact with two brothers because of their attitudes toward the family. It was obvious during the hearing that he feels considerably more attachment to his in-laws than to his siblings. Because his contacts with his siblings are both infrequent and casual, I conclude MC 3 is established.



The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). After evaluating each family member's individual circumstances as well as the totality of Applicant's family ties to Pakistan, I conclude Applicant has mitigated the security concern based on his family ties to Pakistan.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): 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 Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge

1. Government Exhibit (GX) 2 at 1-2.
2. GX 1 at 1; Answer to SOR at 4..
3. Tr. 4.
4. Applicant's Exhibits (AX) A, B, C.
5. AX D.
6. AX I; Tr. 63..
7. AX J.
8. Answer to SOR; Tr. 37.
9. GX 2 at 3; AX E.
10. AX F, G.
11. GX 2 at 3; Tr. 46.
12. AX H; GX 2 at 2..
13. Tr. 41.
14. Answer to SOR at 2.
15. Tr. 58.
16. Tr. 55-56.
17. Answer to SOR at 2.
18. GX 2-3.
19. AX K; HX VI; Tr. 39-40.
20. Tr. 48.
21. Tr. 53.
22. GX 2 at 4.
23. Tr. 51-52.
24. U.S. Dept. of State, *Background Note: Pakistan* 1, 5, 7, 9, 1-12 (Dec. 2005), incorporated in the record as HX VII.
25. U.S. Dept. of State, *Country Reports on Human Rights Practices* 1 (Feb. 28, 2005), incorporated in the record as HX

III.

26. U.S. Dept. of State, *Consular Information Sheet, Pakistan* 1-3 (Jul. 20, 2005), incorporated in the record as HX I;  
U.S. Dept. of State, *Travel Warning, Pakistan* 1 (Mar. 25, 2005), incorporated as HX II.

27. GX 1 at 5-8.