

DATE: September 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-14555

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

FOR APPLICANT

David Kasanow, Esquire

Kara M. Klaas, Esquire

SYNOPSIS

The government's evidence failed to establish that Applicant's contact with Pakistani nationals--none of whom were immediate family members--were anything other than casual and infrequent. Further, Applicant fully disclosed the details of those contacts to the government, as required. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 6 March 2006 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence [\(U\)](#) He answered the SOR 21 March 2006, and requested a hearing. DOHA. DOHA assigned the case to me 24 May 2006, and I convened a hearing on 3 August 2006. DOHA received the transcript 11 August 2006.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact. He is a 56-year-old principal database analyst employed by a defense contractor since August 2001, seeking to retain the security clearance he has held for approximately 20 years.

Applicant was born in Pakistan in 1950. He grew up in Pakistan, and was educated there. He immigrated to the U.S. in 1973, and has resided here since. He became a naturalized U.S. citizen in arch 1986. He obtained his most-recent U.S. passport in March 1999.

Applicant has been married and divorced three times. He first married a native-born U.S. citizen in May 1975, in the U.S. They had a daughter in December 1975, born in the U.S. They separated in 1979, and were divorced in June 1981. Applicant became the custodial parent and is very close to his daughter, now 30 years old. She is married, and both she

and her husband have security clearances.

Applicant married again in April 1983, but was divorced again in August 1984. Although his wife was born in Pakistan and they married in Pakistan, she eventually immigrated to the U.S. and became a naturalized U.S. citizen. Applicant has had no contact with her since their divorce.

Applicant married for the third time in November 1999, but was divorced again in April 2001, largely because his wife was ultimately unwilling to immigrate to the U.S. and become a U.S. citizen. They married in Pakistan, and she was a Pakistani national--albeit very westernized according to Applicant. Her unwillingness to come to the U.S. was related to custody issues regarding her two small children from a previous marriage.

Between January 1998 and October 2003, Applicant traveled to Pakistan about seven times.⁽²⁾ The bulk of these trips occurred between 1999 and 2000, as Applicant first courted his third wife, got married, and attempted to reconcile after they separated over her unwillingness to immigrate to the U.S. He also traveled to Pakistan with his daughter in January 1998, to show her her cultural heritage, and in October 2003 to obtain a wedding dress and trousseau for her upcoming wedding in the U.S.

Applicant has no immediate family members residing in Pakistan. Both his parents are dead. His siblings all reside in the U.S. and are U.S. citizens. His only child is a U.S. citizen, residing in the U.S. He does have a number of cousins and a couple of childhood friends who are citizens and residents of Pakistan, with whom he last had telephone contact time in 2003.

When Applicant was traveling to Pakistan between 1999 and 2000, he became friends (more like acquaintances) with some of his third wife's friends. One of these friends was a retired officer in the Pakistani army. Another was the "chief protocol officer" for the provincial government.⁽³⁾ He has occasional telephone contact with these individuals (the last time in 2003). He remains on good terms with this third ex-wife and calls her maybe twice a year, most recently a birthday call in 2005.

When Applicant traveled to Pakistan in October 2003 to shop for his daughter's trousseau, he became acquainted with a Pakistani national who was employed by the United Nations (U.N.) Office of Drug Control and Crime Prevention in Pakistan. They became sufficiently well acquainted that Applicant told him to contact Applicant if he was ever in the U.S. In August 2005, this acquaintance and a business colleague from the same office were on a U.N. business trip that took them to Canada, and would take them to the U.S. Applicant's acquaintance called him from Canada, and Applicant invited him and his colleague to stay with him while they were in the U.S. on business. Applicant did this as a matter of Pakistani cultural courtesy. He had never met the business colleague until introduced to him by his acquaintance when they arrived in the U.S. Applicant hosted these men for about five days. When they were not involved in the U.N. business that brought them to the U.S., Applicant entertained them by showing them some of the local tourist attractions.

Applicant owns a home in the U.S. He has voted in U.S. elections since he became a citizen. All his financial interests are in the U.S., as are all members of his immediate family. He does not claim dual citizenship with Pakistan. In his October 2004 application for periodic investigation (G.E. 1), he truthfully disclosed the full extent of his foreign contacts, and updated those contacts in great detail in response to January 2006 interrogatories proposed by DOHA (G.E. 2). Applicant has an exemplary employment record, and has been recognized for his exceptional performance, by his employer as well as multiple government agencies whom he has directly supported on his company's contracts. He has satisfactorily handled his security responsibilities for nearly 20 years, has received regular security briefings on his security requirements, and is well aware of his obligations should foreign nationals attempt to elicit classified information from him.

Pakistan is an Islamic parliamentary democracy with a poor human rights record. Nevertheless, Pakistan has actively cooperated with the U.S. in the global war on terrorism. Pakistan is not on the National Counterintelligence Center's list of most active nations engaging in foreign economic collection and industrial espionage. It is not known to be an active collector of U.S. intelligence information.

POLICIES AND BURDENS

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽⁴⁾

CONCLUSIONS

The government failed to establish a case for disqualification under Guideline B. None of the foreign nationals Applicant has had contact with since 1999 are members of his immediate family. The government's evidence fails to establish that Applicant has close ties of affection or obligation to any of these foreign nationals. ⁽⁵⁾ Similarly, the government did not establish that these foreign national acquaintances were connected with any foreign government. ⁽⁶⁾ The acquaintance who was a retired Pakistani army officer was long retired before Applicant met him. The government failed to establish that the provincial official responsible for the provincial guest house had any connection to the national government. Further, the Pakistani nationals Applicant hosted in August 2005 (one of whom was completely unknown to Applicant), were employees of the U.S., not Pakistan. Finally, Applicant had not failed to disclose his contacts with foreign nationals. To the contrary, he twice disclosed his foreign connections during his most recent background investigation. ⁽⁷⁾

Further, even if I could stretch common sense to conclude that the retired army officer, provincial official, or U.N. employees should be considered connected to a foreign government, I would conclude Applicant mitigated the resulting security concerns, both because his contacts with them are casual and infrequent ⁽⁸⁾ and because Applicant has reported his foreign contacts as required ⁽⁹⁾. In similar fashion, his contacts with his cousins and boyhood friends, and his ex-wife for that matter--none of whom are immediate family--are casual and infrequent, and he has duly reported them. Beyond that, Applicant's travel to Pakistan fails to establish any security concerns cognizable under Guideline B. The bulk of his travel was related to his short-lived third marriage, and the two other trips involved introducing his adult daughter to her Pakistani culture and shopping for her trousseau. Nothing in any of these trips suggests an avenue for influencing Applicant to compromise his security responsibilities--satisfactorily performed for nearly 20 years. Applicant is well aware of his security responsibilities and there is no reason to assume he could be influenced by his limited contacts with Pakistani nationals. Accordingly, I conclude Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the 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. Clearance granted.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Before 1998, he had been back to Pakistan twice since immigrating to the U.S., once in 1983 for his second marriage and once in 1989.
3. A title more impressive on the business card than in reality. This friend was responsible for running the provincial guest house where Applicant stayed on some of his visits to Pakistan.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. E2.A2.1.2.1. An immediate family member, 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;
6. E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;
7. E2.A2.1.2.4. Failing to report, where required, associations with foreign nationals;
8. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;
9. E2.A2.1.3.4. The individual has promptly reported to proper authorities all contacts, . . .from persons or organizations from a foreign country, as required;