

DATE: October 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-03043

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign influence, including close foreign family ties, pose a potential security risk and have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On June 22, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on July 6, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 4, 2006. A notice of hearing was issued on August 22, 2006, scheduling the hearing for September 18, 2006. At the hearing the Government presented seven exhibits. The Applicant presented four exhibits and testified on his own behalf. The official transcript (Tr.) was received on September 27, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is twenty-six years old and has a Bachelor's of Science Degree in Engineering. He is employed as a Manufacturing Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Pakistan in 1980. He immigrated to the United States with his parents and brother in 1997, at the age of seventeen. He became a United States citizen in 2002. Through an arranged marriage, he married a woman from Pakistan in January 2006. This woman still resides in Pakistan with her parents. She is a citizen of Pakistan. The Applicant communicates with her at least once a day by telephone or e-mail. The Applicant's wife has never traveled to the United States.

Although the Applicant's parents are also United States citizens, they are currently residing in Pakistan. They spend about half of the year in Pakistan and the other half in the United States. His father has an accounting business and his mother is a housewife. His father owns a house in Pakistan that his parents live in when they are in Pakistan. The Applicant's brother is a United States citizen who resides in the United States. The Applicant and his brother stand to inherit something from their father in Pakistan.

The Applicant's in-laws including his mother-in-law, father-in-law, brother-in-law and sister-in-law are all citizens and residents of Pakistan. His father-in-law is a supplier of filtered water. There is no evidence that any of the Applicant's family members are agents of or associated with the Pakistani government.

Since becoming a United States citizen, the Applicant has traveled to Pakistan about five or six times. His most recent trip to Pakistan was in May 2006, to visit his wife. He plans to travel again to Pakistan in December 2006, to spend Christmas there and will return with his wife sometime in January 2007, as her immigration petition has been approved.

He anticipates that his wife, who is close to her sister, will continue their relationship by maintaining regular contact. He does not plan to travel to Pakistan as frequently due to the expense.

He maintains that his contact with his foreign relatives will be limited to holidays or special occasions.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

#### Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

#### Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign contacts raise legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its

case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The evidence establishes that the Applicant has a large family in Pakistan, including his wife, and his father and mother, his father-in-law, mother-in-law, brother-in-law and sister-in-law. He has close and continuing contact with these family members. He contacts his wife in Pakistan on a daily basis. Disqualifying Condition (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* applies. The Applicant's close relationship with his foreign relatives who are citizens of and/or reside in Pakistan is a security concern for the United States Government. Under the particular facts of this case, none of the mitigating conditions are applicable.

In addition to the Disqualifying and Mitigating Conditions, I have also considered the "whole person" concept. The Applicant is a young adult who has recently, by arrangement, married a Pakistani woman. His wife still resides in Pakistan. Both extended families are currently living in Pakistan. The Applicant's contact with Pakistan is regular, constant and continuing. His parents spend live in Pakistan for half of the year and his father owns property there that the Applicant stands to inherit. The Applicant has not broken any foreign ties with Pakistan. Based on the foregoing, this does raise a potential security risk and Guideline B (Foreign Influence) is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant 1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge