



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
XXXXXX, Xxxxxx Xxxxxxxx)	ISCR Case No. 07-16980
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 29 February 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.¹ Applicant answered the SOR 24 March 2008, and requested a hearing. DOHA assigned the case to me 21 April 2008, and I convened a hearing 20 May 2008. DOHA received the transcript (Tr.) 2 June 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the Guidelines B allegations, except for SOR 1.g. and 1.i.. He is a 42-year-old principal staff engineer employed by a defense contractor since December 2006. He has not previously held a security clearance.

Applicant was born in Pakistan in October 1965. When he was 16 years old, he moved to the United Kingdom (U.K.) to attend university and graduate school. By virtue of his residence in the U.K. from 1981 to 1994, Applicant became eligible for, and applied for, British citizenship. He previously held a British passport in addition to his Pakistani passport. His British passport expired in 2006 (A.E. C). In October 1989, he married a native-born Pakistani whom he met in the U.K.. They had two children together while they lived in the U.K. In 1994, Applicant immigrated to the U.S. with his family. Their youngest child was born in the U.S. in July 1997. Applicant became a naturalized U.S. citizen in July 2006. His wife became a naturalized U.S. citizen in September 2006.

Applicant has no financial or property interests in Pakistan. All his property and financial interests are located in the U.S. He does not stand to inherit any property in Pakistan. Applicant does not intend to return to Pakistan.

Pakistani law does not permit dual citizenship or nationality except with the U.K. and Commonwealth nations. Under the Pakistan Citizenship Law of 1951, both Applicant and his wife ceased to be Pakistani citizens when they acquired U.S. citizenship (A.E. C). Applicant's three minor children acquired Pakistani citizenship at birth through their father, which they can retain until age 21, at which point they must make an election between their U.S. citizenship and their Pakistani citizenship. His two children who were born in the U.K. have also become U.S. citizens.

Applicant's parents and father-in-law are deceased. He has nine siblings, most of whom are much older than him. He has one brother who is three years older, a dual citizen of Pakistan and Canada, residing in Canada. He has one sister who is seven years younger, a citizen of Pakistan residing in Canada.

Applicant has a brother, two sisters, and a mother-in-law, who are resident citizens of Pakistan. His brother is a banker. The women are all housewives. On his wife's side of the family, Applicant has four sisters-in-law and a brother-in-law. His brother-in-law is a recently-appointed deputy attorney general for Pakistan, who is married to his wife's sister. The women are all housewives. Applicant has two sisters who are citizens of Pakistan, residing in Canada. They are both housewives. Applicant has a brother and sister who are dual citizens of Pakistan and the U.K., residing in the U.K. His brother retired from the Pakistani army in 2001. His sister is a housewife. Applicant has two brothers who are dual citizens of Pakistan and Canada, residing in Canada. He had two brothers-in-law, one who retired from the Pakistani army and one who retired as an engineer with the Pakistani government. Both moved to Canada after they retired.

Applicant talks to some of his siblings as often as monthly. However, his family contacts appear more haphazard than regular. He traveled to Pakistan in June 2002, December 2003, January 2004, August 2004, and August 2005. None of his family members is aware that his job requires a security clearance.

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. However, terrorist groups operate in Pakistan, making safety and security an issue. 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, nor is it known to target its expatriate former citizens to obtain U.S. information.

Policies

The Revised Adjudicative Guidelines (RAG) list factors 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 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 RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where 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.

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.²

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁴

In this case, the government established a case for disqualification under Guideline B. However, the security concern relates more to the potential terrorist threats to safety and security than to the Pakistani government. Considering first the country involved, Pakistan and the U.S. enjoy good foreign relations. It has not been demonstrated that the Pakistani government is actively engaged in the collection of U.S. intelligence, or that it targets its expatriate citizens in such a way that would make Applicant or his family members likely targets for coercion, duress, or influence. The terrorist activity in Pakistan is largely intended to invoke generalized fear in the population and influence the Pakistani government in its support for U.S. operations in Afghanistan. There is no evidence to suggest that terrorist groups are targeting expatriate Pakistanis, or their family members, to obtain U.S. information.

Considering Applicant's circumstances, the government produced little evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts with his family members in Pakistan. Applicant's contacts with his siblings are widely diffused. His travel to Pakistan has no independent security significance, but serves to show some additional level of contact with his siblings.

At the outset, the government's evidence supports no security concerns for Applicant's family members, including his wife and children, who are resident citizens of the U.S., the U.K., or Canada, whether or not they remain citizens of Pakistan. And indeed, the government articulated no security concerns surrounding the governments of Canada and the U.K.—including concerns relating to Applicant, who appears to retain

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7.(a).

his U.K. citizenship. Nor is there any reason to find security concerns related to Applicant's two sisters, both housewives, who reside in Canada as legal permanent residents with their Canadian-citizen husbands. Except as discussed below, none of Applicant's family members residing in Pakistan have any connection to the Pakistani government. A brother who served in the Pakistani army retired to the U.K. where he holds citizenship. Two brothers-in-law who, served in the Pakistani army and as an engineer with the Pakistani government, retired to Canada where they are both citizens. The one family member who raises a scintilla of a security concern is the brother-in-law who was recently appointed a deputy attorney general for Pakistan. However, the connection between the brother-in-law and Applicant is extremely remote, as the brother-in-law is married to Applicant's wife's sister. Applicant's connection to the Pakistani government through this remote in-law would always be balanced (even if it was shown to be more direct) against the fact that Pakistan is not known to seek protected U.S. information, or to target its ex-patriate citizens to obtain U.S. information. In this case, the connection seems too tenuous to constitute a significant security concern. Furthermore, if both Pakistan and Applicant no longer consider him a Pakistani citizen, any prospect of pressure seems remote. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in Pakistan. Accordingly, I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant
Subparagraph f:	For Applicant
Subparagraph g:	For Applicant
Subparagraph h:	For Applicant
Subparagraph i:	For Applicant
Subparagraph j:	For Applicant
Subparagraph k:	For Applicant
Subparagraph l:	For Applicant

Conclusion

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 GRATTAN METZ, JR
Administrative Judge