



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-17768
)	
Applicant for Security Clearance)	

Appearances

For Government, Paul M. Delaney, Esquire, Department Counsel
For Applicant: Pro se

August 4, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on February 15, 2007. On January 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on February 15, 2008. DOHA issued a notice of hearing on April 15, 2008, and the hearing was held on May 22, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility of security clearance access is denied.

At the hearing, the government submitted two exhibits (GE). The third exhibit (GE 3, administrative notice exhibit) contains publications from United States Government agencies that describe the government of Pakistan, its human rights record internally, its geopolitical relationship with neighboring countries in the Middle East, and the various difficulties U.S. citizens face in traveling to the country. At the hearing, testimony was taken from Applicant and two witnesses. He also submitted two exhibits (AE A-AE B). DOHA received the transcript on June 5, 2008.

Findings of Fact

The SOR alleges in paragraph 1 that Applicant's ties and travel to Pakistan raise foreign influence concerns. He admitted subparagraphs 1.a. through 1.d.

Applicant is 33 years old and married. He is employed as a senior network engineer by a defense contractor. He has held his position since his hire in July 2006. He seeks a secret security clearance.

Applicant was born in Pakistan in June 1974. His mother was born in Pakistan in June 1955. His five younger siblings were born in Pakistan and are resident citizens of the country. In 1997, Applicant received his Master's degree in Information Technology in Pakistan.

After working for about 14 months as a computer operator in his native country, Applicant immigrated to this country in April 1998. For a year he was employed as a computer department associate for a national department store. From May 1999 to November 1999, he worked in the hotel business. Following brief employment as a bank teller, he worked for six years as a facilities engineer for a private company. Applicant was naturalized as a United States (U.S.) citizen in February 2002. He received his passport one month later in March 2002. Beginning in July 2006, Applicant began employment for his current employer as a senior network engineer. Applicant has never had a security clearance.

SOR 1.a. Applicant's mother¹ was born in Pakistan in June 1955. She resided in the country as a housewife until January 2008, when she immigrated to this country to live with Applicant. When his mother lived in Pakistan, he called her about once a month.

SOR 1.b. Applicant's 30-year-old brother was born, and is a resident citizen of Pakistan. He is an information technology specialist who never worked for the government of Pakistan. He is married with one son. His wife is a housewife like Applicant's mother. When Applicant's mother was living in Pakistan, she lived at a location where both brothers and one of Applicant's sisters also lived. Applicant communicated with his 30-year-old brother about once a month by telephone or e-mail.

¹ Applicant's father was born in 1953 in Pakistan, and employed as a taxi driver. He passed away in February 2005. Applicant traveled to Pakistan to attend the funeral.

Applicant's youngest brother, 27 years old, was born and is a resident citizen of Pakistan. He is currently enrolled at the local university studying English. He has a Bachelors degree in Information Technology. He has been married for seven or eight years with no children. His wife is a U.S. citizen who is living here, while he is located in Pakistan. The youngest brother received immigration papers on November 20, 2007, instructing him on certain immigration procedures. Applicant stated his contact is less frequent with the youngest brother.

SOR 1.c. Applicant's oldest sister is 32 years old. She was born and is a resident citizen of Pakistan. She is a housewife and mother to three or four children. She was never employed by the Pakistani government. Her husband manages a gas station.

Applicant's second oldest sister was born in Pakistan in January 1987, and is a resident citizen of the country. Her husband is an information engineer with no ties to the Pakistani government. Her immigration petition (sponsored by Applicant) was approved in November 2005.

Applicant's youngest sister was born in November 1988, and is a resident citizen of Pakistan. She is married to a professor at a private university. Her immigration petition was approved in January 2006.

SOR 1.d. Applicant traveled to Pakistan in 2006 when one of his sisters married. In February 2005, he traveled to Pakistan to attend his father's funeral. His trips between 2001 and 2004 were due to his mother's illness. Now that his mother is living with him, he sees no reason to return to Pakistan.

Applicant did not renew his Pakistani passport after it expired in 2002. He has never served in a foreign government's military. He has never accepted any foreign benefits, e.g., education or pension, from Pakistan or any other foreign country. He has never voted in a foreign election or served in a foreign political office. He has never had any financial interests in a foreign country or received income from a foreign country. He has never been contacted by a foreign country's government officials. All his financial interests are in the U.S., including a retirement account amounting to approximately \$4,000.00, and a checking account. Applicant owns a car and owes about \$21,000.00 on a second car he owns. Applicant has voted in the U.S. elections.

Applicant's wife was born in Pakistan in August 1976. She came to the U.S. with her parents between 1980 and 1985. She married Applicant in May 1996 in Pakistan. She received her U.S. citizenship in September 1996. She and Applicant have three children, ages 8, 5, and 5 months. She has been employed at a bank for seven or eight years. Her father (Applicant's father-in-law) is a naturalized U.S. citizen, while her mother (Applicant's mother-in-law) is a permanent resident of the U.S.

The manager of the information technology department of Applicant's employer has known Applicant for about two years. He is one of 12 employees she supervises. Applicant's performance evaluation in October 2007 far exceeded expectations,

according to the manager. Applicant's employer requested a security clearance for Applicant so that there would be sufficient staff for special projects.

Administrative Notice

Pakistan is a parliamentary democracy. It has the world's largest armed forces, which is a very efficient force. Until 1990, the U.S. provided military aid to Pakistan. However, aid was suspended in response to the country's program to develop nuclear weapons. Following September 11, 2001, the sanctions were lifted in response to Pakistani support for the U.S. campaign to defeat the Taliban in Afghanistan, and the overall war on terrorism. In addition to resuming military aid, the U.S. also increased economic assistance to Pakistan, provided necessary debt relief, and supported badly needed educational reform.²

Even though improvements have been made, Pakistan's human rights record is still considered poor, with police abuse and killings, poor prison conditions, violations of the right to privacy, and continued efforts of executive pressure on the judiciary.³

Several Pakistani political parties have periodically voiced strong anti-American sentiment.⁴ Some extremist groups continue to target various Western interests in an effort to reduce the level of Western influence in the country.⁵ However, there is no evidence demonstrating that Pakistan is an active collector of U.S. intelligence information.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a

² Congressional research Service (CRS), *Pakistan - U.S. Relations*, October 26, 2006 (CRS-Relations) at CRS-9-10.

³ U.S. Department of State, *Pakistan: Country Reports on Human Rights, Practices-2006*, March 6, 2007 (Pakistan: Country Reports on Human Rights Practices) at 1; CRS Relations at CRS-12.

⁴ *Id.*

⁵ U.S. Department of State, *Travel Warning: Pakistan*, December 5, 2006 (Travel Warning on Pakistan) at 1.

careful, thorough evaluation of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2b. requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Foreign Influence (FI)

The security issues connected to foreign influence are familial ties, contacts, and/or proprietary/financial interests that could be used to generate a heightened risk of forcing an applicant into a position of having to choose between the foreign entity and the U.S.

Analysis

6. *The Concern.* “Foreign contacts and interests result in security concerns where those contacts and interests create divided loyalties, or may be manipulated or induced by a foreign entity that is harmful to U.S., or is vulnerable to pressure or coercion by any foreign entity. Decisions under this guideline should include the foreign country where the contact or financial interest is located, including, but not limited to whether the foreign government targets U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.”

The government has established a preliminary basis for denying Applicant's security clearance application. His mother is still a citizen of Pakistan, even though she has been living with Applicant in the U.S. since January 2008. His two brothers and his three sisters are resident citizens of Pakistan. His family's Pakistani citizenship, when considered in light of the terrorist activities prevalent in the country, as well as the poor human rights record of the country's government, makes Applicant potentially vulnerable to coercion and pressure through his siblings and mother. Foreign Influence (FI) disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) and FI DC 7.b. (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*) apply. The fact that Applicant's mother and siblings are still citizens and/or resident citizens of Pakistan constitute a heightened risk for foreign coercion and potential for conflict that shifts the burden to Applicant to show why he believes the heightened risk is manageable and he will resolve the conflict in favor of the U.S.

Since Applicant's mother is still a citizen of Pakistan, and his siblings are still resident citizens of Pakistan, Applicant bears a heavy burden of showing his family members do not pose a security risk. ISCR Case No. 01-26983 (October 16, 2002)

Three of the six mitigating conditions (MC) under the FI guideline may apply to the facts and circumstances of this case:

FC MC 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*);

FI MC 8.b. (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is minimal, or the individual has such deep and long lasting relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*);

FI MC 8.c. (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*).

The discussion under FI MC 8.a. begins with Applicant's mother who has been a housewife her entire life. She was never employed nor an agent of the Pakistani government. She has not been in good health and was the reason for several of

Applicant's visits to Pakistan. Applicant sponsored her immigration shortly after his father died in 2005. She has been living with Applicant since January 2008. However, her Pakistani citizenship status still engenders FI concerns that are not sufficiently reduced by her temporary status in the U.S.

Applicant's two brothers are still living in Pakistan. One is an information technology specialist, and the other is a student. Though they are not agents of or employed by the Pakistani government, their presence in that country creates a heightened risk of exploitation, inducement or pressure. Applicant's sponsorship of three of his siblings does not immediately eliminate or reduce the risk for foreign coercion or pressure⁶ created by anti-western sentiment and terrorist activity in Pakistan. FI MC 8.a. does not apply given the heightened risk presented by his siblings in Pakistan. The same conclusion is reached under FI MC 8.b. as insufficient evidence has been provided by Applicant to conclude that he can be expected to resolve any conflict in favor of the U.S. interest.

In determining whether FI MC 8.c. applies, one must evaluate the entire picture of contacts that an applicant has with a family member in a foreign country, rather than the contacts of each family member. ISCR Case No. 01-22693 at 7 (App Bd. Sept. 22, 2003). Applicant's mother moved to the U.S. in January 2008, so his contacts with her are removed from the "contact" equation, but she still remains a source for foreign influence because of her citizenship status. The DOHA Appeal Board has held there is a rebuttable presumption that contacts with a foreign family member are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002) Although contact with each sibling may be casual and infrequent, Applicant's periodic contact with his five siblings at different times of the year, together with his trips to Pakistan since 1999, raise a reasonable inference that those contacts are not casual or infrequent in nature. FI MC 8.c. does not apply. Applicant has not satisfied his burden of persuasion under the FI guideline.

Whole Person Concept (WPC)

My finding against Applicant under the FI guideline must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 individual's age and maturity at the time of the conduct; (5) the extent to which the participation was voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

⁶ While the Appeal Board has held that the security concerns arising from the presence of an applicant's family members in a foreign country are not mitigated by the possibility of a swift and safe departure from that country, I still recognize that Applicant is doing what he can to comply with the immigration laws so that his brother can eventually emigrate to the U.S. See, ISCR Case No. 01-20908 (App. Bd. Nov. 26, 2003)

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and, (9) the likelihood of continuation or recurrence.

Applicant has five siblings who are resident citizens of Pakistan. While his mother is living with him in this country, she is still a citizen of Pakistan. Applicant is commended for sponsoring three of his five siblings for immigration. But, their formal inclusion into the immigration process does not reduce the risks of foreign pressure being applied to and through them to Applicant. I have noted that Applicant has no financial interests or financial obligations in Pakistan, that he has never served in the Pakistani military, that he has never voted or held foreign office, and that he maintains no other contacts with individuals he met in Pakistani schools. I have weighed the aforementioned information with Applicant's growing ties to the U.S. He has earned a good work record since July 2006. After weighing the disqualifying and mitigating conditions under the FI guideline, I conclude Applicant has not mitigated the security concerns of foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 (Foreign Influence, Guideline B):	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge