



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



In the matter of:)	
)	
)	ISCR Case No. 08-06043
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: William F. Savarino, Esquire

August 31, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted his Security Clearance Application (SF 86) on August 24, 2006. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B on February 19, 2009. The action was taken under 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 16, 2009. He answered the SOR in writing on April 3, 2009, and requested a hearing before an administrative

judge. DOHA received the request on April 6, 2009. Department Counsel was prepared to proceed on May 12, 2009, and I received the case assignment on May 15, 2009. DOHA issued a notice of hearing on May 27, 2009, and I convened the hearing as scheduled on June 16, 2009. The government offered two exhibits (GE) 1 and 2, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted six exhibits (AE) A through F, which were received and admitted into evidence without objection. The record closed on June 16, 2009. DOHA received the transcript of the hearing (Tr.) on June 24, 2009.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice, but the date is unknown. (Tr. 10) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Through counsel, Applicant affirmatively waived his right to 15 days notice. (*Id.*)

Request for Administrative Notice

Department Counsel and Applicant submitted a formal request that I take administrative notice of certain facts relating to Pakistan. The requests and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibits I-VIII and A-1 through A-4. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR.

Applicant, who is 44 years old, works as a sales engineer and software consultant for a Department of Defense contractor. Applicant has held a security clearance since 1995 without any violations of security procedures.

Applicant was born in Pakistan. His father immigrated to the United States (U.S.) in 1980. Slowly, his father invited family members to join him in the U.S. Applicant immigrated to the U.S. in 1985 and became a naturalized citizen in 1992. All his immediate family members immigrated to the U.S. Except for his mother, all his family members are U.S. citizens and residents. His mother resides in the U.S. and is a permanent resident. Applicant has a large extended family in the U.S. He graduated from a major U.S. university with a bachelor of science degree in computer science in 1991.¹

¹GE 1; Tr. 34-38, 68-71.

Applicant's wife, who is 36 years old, was born in Pakistan. They met in Pakistan in 1991. She immigrated to the U.S. in 1992 after they became engaged. They married in the U.S. in 1992. She became a U.S. citizen in 1997. They have three children, two sons, ages 16 and 13, and a daughter, age 8. Their children are U.S. citizens by birth and U.S. residents.²

Applicant's mother-in-law and father-in-law are deceased. His wife has three brothers and four sisters who are citizens of and residents in Pakistan. Six are married. She calls her family in Pakistan about once a month and talks with whomever is at the house she calls. She does not talk with all her family members on a monthly basis. Applicant talks with them less frequently. His closest relationship is with her youngest brother, who is 25 years old and a student. His wife's two remaining brothers are farmers and her four sisters are housewives. One wife's husband owns rental properties. He does not know the occupation of his sisters-in-law husbands.³

Applicant provides his 25-year-old brother-in-law with some financial support. He sends him approximately \$150 a month. He does not provide any other financial support for his wife's family members. Neither he nor his wife own any real property in Pakistan. He invested in some stock in Pakistan, which is now worth between \$2,000 and \$3,000. His assets in the U.S. include a house with \$200,000 in equity, a retirement account worth approximately \$100,000, and a \$63,000 state college savings account for his children.⁴

Applicant has two uncles who are citizens of and residents in Pakistan. One uncle is semi-retired. This uncle and his wife have immigrant visas and travel between the U.S. and Pakistan. He visits with this uncle and his wife when they are in the U.S. His other uncle is a professor of agriculture in Pakistan. Applicant has no regular contact with this uncle. He sees this uncle during his trips to Pakistan. In four years, he received one e-mail from this uncle.⁵

Applicant and his wife traveled to Pakistan three times in the last ten years and his wife traveled to Pakistan once on her own. They entered Pakistan on their U.S. passports. In 2008, they learned that if they had a Pakistani identification (I.D.) card, they would not need to acquire documentation from the U.S. for their trips. He has this I.D. card. During their March 2008 trip, his wife's mother died. While in Pakistan, they stayed with his in-laws. They visited with her family. His mother cannot travel to Pakistan and his father's travels are seldom because of his age.⁶

²GE 1; Tr. 42-43.

³Tr. 47-57, 84-89.

⁴Tr. 51, 64.

⁵*Id.* 44-46, 82-63.

⁶*Id.* 59-62, 80-81.

Applicant's in-laws do not know anything about his work, where he works, or that he holds a clearance. They only know that he works with computers. When in Pakistan, Applicant has not been approached by anyone inquiring about his work and how he earned his living. He always notified his security office when he traveled to Pakistan. Because of his security training at work, Applicant knew what to do if approached for work information. His security officer confirmed that he complies with the security rules and that he also protected company proprietary information and export data.⁷

After his wife became a citizen, she applied for immigrant status for her family members in Pakistan, including the husband of the one sister who was married at that time. On June 15, 2009, after waiting more than 10 years, they received notice that her siblings had been granted permission to immigrate to the U.S. The family looks forward to coming to the U.S. Applicant and his wife are in the process of completing the necessary paperwork for her family to immigrate. Because all of his wife's siblings are married, except her youngest brother, they will need to work with the U.S. immigration services to assure his wife's siblings' spouses and children also immigrate. Applicant believes this issue will be resolved. He anticipates that her family members will be in the U.S. within a year. Applicant and his wife have no desire to return to Pakistan.⁸

Applicant's home town and his in-laws residence is located in eastern Pakistan close to Pakistan's border with India. The Northern Frontier Province (NWFP) is located several hundred miles north of Applicant's family home and near the Afghanistan border. The family and Applicant have not traveled to this area because the NWFP residents speak a different language, have different customs, and live different lives. His wife's family has not been subjected to terrorist threats or attacks and are not political activists. His wife's family members have not been targeted by the Pakistani government.⁹

I take administrative notice of the following facts. Pakistan is an Islamic parliamentary democracy with a poor human rights record. Nevertheless, Pakistan remains a principal ally of the U.S. and has actively cooperated with the U.S. in the global war on terrorism. Despite this, terrorist groups, such as the Taliban and al-Qaida, operate in Pakistan, making safety and security an issue. These terrorist organizations target not only Pakistani interests, but U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jacking, assaults, or hostage taking. The Pakistani government, with U.S. support, recently increased its efforts to contain and eliminate terrorists operations within its borders. At this time, the risk of terrorist activities remain extremely high, especially in the NWFP province.

⁷*Id.* 24-32, 58-59, 62-64.

⁸AE C; Tr. 47-49, 60-61, 85-86, 88, 93.

⁹Tr. 34-36, 74-75.

Pakistan is not on the National Counter Intelligence Center's list of the most active nations engaging in foreign economic collection and industrial espionage. Pakistan 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

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 not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 ¶ 2(b) 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An 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 transcends normal duty hours and endures throughout off-duty hours. 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 an 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions could raise a security concern and may be disqualifying in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (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; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant’s immediate family, which includes his wife, children, parents, and siblings, are U.S. citizens and residents. Thus, no security concern is raised by these family members. The siblings of Applicant’s wife are citizens and residents of Pakistan. He has two uncles who are citizens of Pakistan. One uncle lives in Pakistan and one lives between the U.S. and Pakistan. Applicant’s wife maintains a normal, but limited, familial relationship with her sisters and brothers. She talks with siblings who are at

home when she makes her monthly telephone call. Applicant's telephone contacts with his in-laws is less frequent. Applicant and his wife visited her family in 1999, 2004, and 2008. His wife also visited her family in 2002. Applicant provides limited financial support to his wife's youngest brother in Pakistan. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his wife's family members must be considered in deciding whether to grant Applicant a clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, coercion, or risk of terrorism, or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the government of Pakistan and terrorist organizations within Pakistan. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant and his wife's relationship and contacts with her sisters and brothers in Pakistan raises a heightened risk of security concerns because of the activities of terrorist organizations in Pakistan as the terrorist threats to safety and security is greater than concerns that the Pakistani government will seek classified information. The information of record fails to show that the Pakistani government engages in espionage activities in the U.S. or that it targets U.S. citizens in the U.S. or Pakistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information.

Under the new guidelines, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interests.¹⁰ In determining if Applicant's contacts in Pakistan cause security concerns, I considered that Pakistan and the U.S. have a close relationship and that Pakistan is cooperating with the U.S. in the fight against terrorism, including taking new and increased actions against terrorists in its country. There is no evidence that the Pakistani government targets U.S. citizens for protected information. The human rights issues in Pakistan continue to be a concern and the terrorist organizations, not the Pakistani government, target U.S. citizens and U.S. interests in Pakistan. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because his wife's family members live in Pakistan. Because of the significant activities of terrorist organizations in Pakistan, Applicant's trips to Pakistan and contacts with his and his wife's family in Pakistan raise a heightened risk concern under AG ¶¶ 7(a) and (b).

¹⁰Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not in a position to be exploited. The Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he is forced to make a choice between the interest of the family member and the interest of the United States. (See ISCR Case No. 03-17620, (App. Bd, Apr. 17, 2006); ISCR Case No. 03-24933, (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382, (App. Bd. Feb. 15, 2005); and ISCR Case No. 03-15205, (App. Bd. Jan. 21. 2005)). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk.

In deciding if Applicant has established mitigation under AG ¶ 8 , I must consider:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions 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.;

(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 so minimal, or the individual has such deep and longstanding 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; and

(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.

Applicant's wife's normal relationship with her family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires more than statements about the limited scope of her conversations with her brothers and sisters. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). His wife's family members have never held a political position. Her family members have not been targeted by the Pakistani government or terrorists. His immediate family members are citizens and residents of the U.S. He owns no property in Pakistan and has minimal financial assets in Pakistan. Balancing these factors as well as Pakistani's cooperation in counterterrorism, and the lack of evidence that the Pakistani government targets U.S. citizens for protected information against the risk of terrorism, I find that Applicant would resolve any conflict in favor of the U.S. interests. Likewise, any threats by terrorist organizations against Applicant's wife's family in Pakistan would be resolved in favor of U.S. interests. His loyalties are to the U.S., not Pakistan or terrorist organizations. Applicant has mitigated the government's security concerns as to his family contacts specified in the SOR under AG ¶¶ 8(a), 8(b), and 8(c).

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant emigrated from Pakistan 24 years ago as a young man. He has lived his entire adult life in the U.S. His values and preferences have been guided by his experiences in the U.S., leading to his decision to become a U.S. citizen in 1992. His immediate family is in the U.S. Two brothers-in-law work as farmers in Pakistan, one brother-in-law is a student, and his four sisters-in-law are housewives. The evidence does not show that members of his wife's family or his two uncles are connected to the Pakistani government and its day to day operations. His in-laws live quietly. They are not political activists nor do they have any connection with terrorists. Once her family members arrive in the U.S., these concerns will no longer exist.

Although his wife has regular contact with her siblings, Applicant has limited contact with his in-laws. These contacts could, under certain circumstances, raise a serious security concern. Those circumstances are not present in this case because the Pakistani government does not conduct espionage activities against the U.S. The record lacks any evidence that the Pakistani government seeks to obtain classified documents from the U.S. and thus, it is highly unlikely that the Pakistani government will attempt to coerce, pressure, or exploit U.S. citizens to obtain classified information. While there remains a serious human rights issue in Pakistan, there is little likelihood that Applicant will be placed in a position to provide classified information to the Pakistan government or that his family members will be harmed by the Pakistani government given its present relationship with the U.S. The threat of harm from terrorists organizations is real and significant. However, with U.S. help, Pakistan is taking much more aggressive action against terrorism within its borders near Afghanistan. Applicant's in-laws live many miles from where the terrorists reside and attack. They have not been exposed to terrorist acts. After considering all the evidence of record, I find that overall, there is little risk that Applicant will violate the security

procedures by providing classified information to the government of Pakistan as a result of terrorist activities. His loyalties to the U.S. are deep and long. The U.S. is home, not Pakistan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B.

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, Guideline B:	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
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge