



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-08825
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Laura J. Anderson, Esquire

August 27, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant’s immediate family members are now all in the U.S., but his friends and extended family members in Pakistan, together with frequent and extended visits there by him and his mother, support foreign influence security concerns that were not mitigated. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his security clearance application on June 4, 2008. On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 24, 2009. He answered the SOR in writing (AR) on March 26, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 6, 2009, and the case was assigned to me on May 11, 2009. DOHA issued a notice of hearing on June 1, 2009, and I convened the hearing as scheduled on June 23, 2009. The Government offered exhibits (GE) 1 and 2, which were admitted without objection. The Government also offered HE I, comprising a request that I take administrative notice of certain facts concerning the Islamic Republic of Pakistan and seven Government documents supporting the veracity of those facts. Applicant had no objection, and administrative notice was taken of these facts. Applicant testified on his own behalf, and submitted exhibits (AE) A through C, which were admitted without objection. I granted Applicant's request to leave the record open until July 15, 2009, to permit his counsel's submission of a written final argument and any possible objection to the administrative notice request. DOHA received the transcript of the hearing (Tr.) on July 6, 2009. On that same date, Applicant's counsel submitted her final argument, without objection to the administrative notice request, and AE D. These documents were forwarded by Department Counsel without objection on July 10, 2009. AE D was admitted into evidence, and the record closed on July 15, 2009, without further submissions.

Findings of Fact

In his Answer to the SOR, Applicant admitted some of the factual allegations and denied others with explanations. Applicant's admissions, including those contained in his response to DOHA Interrogatories (GE 2), are incorporated in the following findings.

Applicant is a 25-year-old computer security intern employed by a defense contractor. He has worked for his present employer for just over a year. He was born and raised in Pakistan. When he was two years old, his father immigrated to the United States to attend school. His father eventually obtained permanent resident status, and then became a naturalized U.S. citizen in 1996. (GE 1 at 6; Tr. at 98, 111.)

In early 2000, after becoming a citizen and establishing himself financially, Applicant's father obtained visas for his three children to join him in the U.S. Applicant and his younger sister were both under age 18, and were accordingly eligible to apply for citizenship as their father's children without going through the adult naturalization process. (Tr. at 51, 59, 113.) Applicant became a U.S. citizen during August 2001, at age 17. (GE 1 at 7.) His sister obtained her U.S. citizenship during February 2002. (AE B.) His older brother, who was already 18 years old when they arrived, had to qualify for naturalization as an adult. He completed all requirements and became a U.S. citizen in 2005. (Tr. at 84.)

Applicant's mother's visa took longer to be approved. Since she was ill, Applicant returned to Pakistan for three or four weeks in 2001 to assist her and try to expedite the visa process. She finally obtained her visa and came to the U.S. later in 2001. (Tr. at 50, 59.) His mother became a U.S. citizen in January 2007. (AE C.) Applicant traveled to Pakistan again in February 2003, to visit family and friends. During all his trips to

Pakistan, he stayed with his mother's relatives, and did not work. Although Applicant testified that he could not recall the details of this trip, the entry and exit stamps in Applicant's passport suggest this was a six-month trip that lasted until September 2003. (GE 2 at 111, 120, Tr. at 50-51, 76.) Applicant also returned to Pakistan in December 2003 to visit his ill grandfather, with whom he was very close. He initially planned to go for a few weeks, but his grandfather's condition continued to deteriorate so he remained to assist his elderly grandmother with his grandfather's care. Finally, his grandfather passed away and he remained for the funeral. He returned to the U.S. in June 2004. (GE 2 at 120, AR at 4; Tr. at 48-50.)

Applicant's passport also indicates a visit to Pakistan of undetermined length ending in June 2005. He admitted there may have been more trips to Pakistan in addition to the 2001 and 2007 trips he disclosed to the Office of Personnel Management (OPM) investigator but said he could not remember the details. (GE 2 at 112, 120.) Although his visa to visit Pakistan was not due to expire until September 15, 2007, Applicant obtained a new visa to conduct multiple visits to Pakistan of up to one year in duration on June 6, 2007. The new visa is valid until June 2012, and was issued for the purpose of visiting family. (GE 2 at 11, 15.)

Applicant's sister married a man from Pakistan during 2007. Applicant went to Pakistan for the wedding, arriving in July and departing in September. He went early because he was the only family member available to spend the time to help his sister with wedding arrangements. (Tr. at 47-48.) Applicant's brother-in-law became a permanent resident of the U.S. in September 2008, and resides with Applicant's sister in the U.S., where they intend to remain. (AR at 10; Tr. at 45.)

In 2008, Applicant's brother married a woman from Pakistan in a U.S. ceremony conducted after she entered the U.S. on a fiancée visa during July 2007. She became a permanent U.S. resident in January 2009, and intends to remain in the U.S. and become a citizen when eligible. (AR at 12-14; Tr. at 85-86.)

Applicant lives with his mother, sister, brother-in-law, brother, and sister-in-law in one residence. His father and mother recently divorced, and his father lives with his new wife in a different part of the same city. (Tr. at 87, 117.) Applicant has other, more distant relatives still living in Pakistan, to include his mother's sister, his father's mother, his father's brother and three sisters, and the complete families of his brother-in-law and sister-in-law. His mother's brother, who was the uncle who worked for the Pakistani police as alleged in the SOR, passed away in February 2009. (AR at 3, 7; Tr. at 46, 74-75, 109, 114.) Applicant said he has little to no personal contact with any of these people, but his immediate relatives do maintain contact with their respective relatives. (*Id.*) None of those people is connected to the governments of Pakistan, the U.S., or any other country.

Applicant's mother had two surgeries for heart problems shortly after arriving in the U.S. As noted above, she became a U.S. citizen in January 2007. The following month, she returned to live in Pakistan so that her sister and brother there could help

her to take care of her ongoing heart condition and keep her company. She lived with her sister and her sister's family there. All three of her children in the U.S. were away at work or school all day, and she was unhappy being left alone. She remained in Pakistan after her daughter's 2007 wedding there, to help care for her brother who became seriously ill shortly thereafter. Her brother passed away in February 2009, and she returned to the U.S. in April 2009. My understanding of Applicant's testimony is that his mother also spent some unspecified amount of time between 2001 and 2007 living with her sister in Pakistan due to her heart condition. Applicant and his mother have a close relationship, and he spoke with her by telephone every other day while she was in Pakistan. (GE 2 at I20-I21; AR at 3; Tr at 70-73.)

During his July 2008 OPM interview, Applicant said that he still had relatives and friends in Pakistan. He said the purposes of his visits from December 2003 to June 2004, and from January to February 2001, were to visit family and friends. He said that he maintained contact with his "numerous friends" in Pakistan via online chat on a sporadic basis, from once every month to every six months. Other than his uncle who worked for the police, all his friends and relatives there work in banking and private businesses. He said that he does not have a preference for the U.S. over Pakistan nor for Pakistan over the U.S. He further stated that both Pakistan and the United States are his countries and he would not choose one country as a preference over the other. (GE 2 at I20-I21.) He reviewed, adopted, and attested to the accuracy of these statements, under oath, on October 30, 2008. (GE 2 at I23-I24.)

When asked to explain these remarks, Applicant testified:

She asked me to go back, I think, ten years. I told her when I was new here I just chat with them sometimes, like once in a month, some once in six months, just to - - because I was so new here, I didn't know anybody, I didn't have any friends. So I just chat with them for a little bit. And then after that I stopped chatting because I don't know where they are at now and what they are doing and they don't know where I am right now and what I'm doing. . . . [From last July until now I have lost touch with all these friends.] . . . And that time [July/October 2008], now - - I was just going to school here and making friends but now I'm more involved in serving into the community. Now I'm having more friends, so now I'm getting used to more in this culture. I'm liking it more. So now my thinking are [sic] changing now. Like I want to stay here forever. I don't want to go back now. At the beginning I was just like going to school and work. I didn't have friends. Actually, I didn't have time to go out. But now I do socializing, do go out with my friends, watch movies, have fun with them. So now I'm, like, you know, I'm enjoying my life here. I want to stay here forever. And at the beginning it was like little different because I was very new here.

(Tr. at 78-80.) During his hearing testimony, and in his written response to the SOR, he referred to Pakistan as "home" several times. (AR at 4; Tr. at 70, 71.)

I took administrative notice of the facts set forth in HE I concerning the Islamic Republic of Pakistan, which are incorporated herein by reference. Of particular significance are the active and hostile presence of Al Qaida, Taliban, and other extremist groups, and concerns over weapons and nuclear technology transfers and cooperation with countries including North Korea, Iran, Libya, and China.

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 to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued that the evidence in this case established one of them: ¶ 7(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.” (Tr. at 121-123.) Although not directly asserted by Department Counsel, disqualifying conditions ¶ 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;” and ¶ 7(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;” were also raised by substantial evidence.

Pakistan has significant internal anti-western terrorism threats and a history of security-related technology proliferation and transfers contrary to U.S. interests. Accordingly, connections there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections in many other countries.

Applicant shares living quarters with his mother, brother, sister, brother-in-law, and sister-in-law. He has a close and loving relationship with his mother, and through her has an entirely legitimate, serious interest in the welfare of her sister and her sister’s family who are citizens and residents of Pakistan. He also has a strong and loving

relationship with his brother and sister, both of whom have spouses who are Pakistani citizens whose entire families are resident citizens there. Although living separately, Applicant also shares a close relationship with his father, whose mother, brother, and three sisters are resident citizens of Pakistan.

Applicant's numerous and lengthy visits to Pakistan, since coming to the U.S. in 2000, further demonstrate his ongoing connections and ties there. As recently as October 30, 2008, he attested that he considered Pakistan as much his country as the U.S., and described regular contacts with numerous friends who reside there.

These facts meet the Government's burden of production by raising all three of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and connections with Pakistan and his numerous friends and relatives from there shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (d) security concerns are:

(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.

Considered in light of the significant anti-western terrorism threat and history of security-related technology transfer problems in Pakistan, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his friendships and family ties there. Even if his claims to have recently lost all personal contact with, and interest in, friends and relatives residing in Pakistan are true, he has close relationships with his parents and siblings, all of whom have ongoing relationships with close relatives who are resident citizens there. His communication and contact with Pakistani friends and family members during at least five lengthy visits there since he came to the U.S. in 2000 were neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a) and (c).

The evidence also fails to establish mitigation under AG ¶ 8(b). Applicant asserted that his recent progress in making and socializing with new friends in the U.S. has caused him to change his thinking, to get used to and like this culture more, and to decide he wants to stay here rather than return to Pakistan. Having been offered a good job that requires a security clearance cannot be discounted as a significant factor in this newfound appreciation for the U.S. As recently as last October, Applicant expressed equal loyalty toward Pakistan and the U.S., before becoming aware of the security clearance implications of those sentiments. Furthermore, he made lengthy visits back to Pakistan at least every other year since coming here at age 16, most recently less than two years ago. He came to the U.S. at his parent's direction after his father obtained citizenship and could sponsor him, and it was his father who applied for and obtained U.S. citizenship for him while he was a minor. He has no record of service or sacrifice for the U.S. that would demonstrate any deep or longstanding relationships or loyalties under Appeal Board precedent.

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 the applicant's conduct and all relevant circumstances established by the record evidence. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Security concerns do not involve any personal misconduct, dishonesty, irresponsibility, or disloyal activity. The primary whole-person issues of concern under these circumstances are his direct and indirect relationships with Pakistani friends and relatives, and his personal connection to Pakistan where he was born and lived for almost two-thirds of his life. These considerations raise, "(8) the potential for pressure, coercion, exploitation, or duress;" and "(9) the likelihood of continuation or recurrence."

Applicant's extended family members and friends, who reside in and are citizens of Pakistan, create an ongoing potential for pressure, coercion, exploitation or duress. His close relationships with his parents naturally make the welfare of their siblings and his grandmother important to him. His close relationships with his siblings similarly give him good reason to be concerned for the families of their Pakistani spouses. The frequent and extended visits to Pakistan by both Applicant and his mother since 2000 expose them personally to potential exploitation, duress, and terrorist activity as U.S. citizens. Recurrent visits to Pakistan by one or both of them in the future are likely. Applicant renewed his visa to permit multiple visits there for up to a year until 2012, and the health reasons for which his mother went to live with her sister remain unchanged. Applicant states that he and his mother now intend to remain in the U.S. permanently, but their established pattern to the contrary since 2001 makes it premature to base substantial mitigation on those assertions.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence considerations.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant*
Subparagraph 1.d:	Against Applicant**
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

* Excepting the words, "and resident." Of the excepted words, For Applicant.

** Substituting the word "wife" for the word "fiancé" [sic]; and excepting the words "and resident." Of the excepted words, For Applicant.

Conclusion

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

DAVID M. WHITE
Administrative Judge