



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



In the matter of:)
)
-----) ISCR Case No. 08-09408
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Department Counsel
For Applicant: *Pro Se*

March 31, 2010

Decision

LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Electronic Questionnaire for National Security Position on dated August 14, 2008. (Government Exhibit 8). On July 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E for Applicant. 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 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.

The Applicant responded to the SOR in writing on September 9, 2009, but submitted an incomplete answer by failing to admit or deny the allegations. DOHA requested the information by letter dated September 18, 2009. Applicant responded with another answer to the SOR on October 14, 2009, wherein she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on December 2, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 19, 2009, and she submitted no reply. The case was assigned to the

undersigned for resolution on February 5, 2010. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts concerning the current political conditions in Pakistan. Applicant made no objection. The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the FORM and the exhibits. The Applicant is 53 years of age and employed as a Linguist. She seeks a security clearance in connection with her 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 she 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 1956 to Pakistani parents. She came to the United States in 1978, and became a naturalized United States citizen in 2006. In 1978, she was married in Pakistan to her spouse, also a Pakistani national, who became a naturalized citizen of the United States in 1984. The Applicant has seven siblings. One of her siblings, a brother, is a citizen of the United States who resides in Pakistan.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because she intentionally falsified material aspects of her personal background during the employment process.

The Applicant completed an Electronic Questionnaire for Investigations Processing dated August 14, 2007. Section 14/15 stated: "Your relatives and Associates: Give the full name, correct code, and other requested information for each of your relatives and associates, living or dead, specified below. 1. Mother, 2. Father, 3. Stepmother, 4. Stepfather, 5. Foster Parent, 6. Child (Adopted and Foster Child also), 7. Stepchild, 8. Brother, 9. Sister, 10. Stepbrother, 11. Stepsister, 12. Half-brother, 13. Half-sister, 14. Father-in-law, 15. Mother-in-law, 16. Guardian, 17. Other Relative, 18. Associate, 19. Adult Currently Living With You". The Applicant failed to list any brothers or sisters. As stated above, she has seven siblings.

One of her brothers resides in Pakistan. The Applicant stated that her brother visited Pakistan in 2007. At the time, of his visit, his intention was to stay for a few weeks. He later decided to extend his visit because his wife and his daughters wanted

to spend more time with their grandparents. Currently, the Applicant's brother is still residing in Pakistan, but he plans on returning to the USA in the near future. Applicant claims that she was unaware of her brother's plans to extend his visit and contends that he is simply a long-term visitor. She states that she last had contact with him in June 2009, and that she is unaware of his activities in Pakistan.

The Applicant completed Foreign Influence Interrogatories in April 2009, issued to her by the Department of Defense, in which she was required to reply to the following question: "9. Do you have any immediate family member (spouse, father, mother, sons, daughters, brothers, sisters), other relative (including in-laws), cohabitant, friend, or business or professional associate who is a citizen of a foreign country, or who lives in a foreign country?" The Applicant responded "NO". This was a false answer. The Applicant has a brother who lives in Pakistan. (Government Exhibit 10).

The Applicant claims that when she completed the security clearance application and the interrogatories, she thought her brother was still residing in the United States. She states that she never intentionally falsified any information on the security clearance application. She claims that she did not disclose the existence of her siblings because she no longer has contact with them and did not have information about them. Under the particular facts of this case, I find this behavior unconvincing and not worthy of belief. In fact, at the time that the Applicant provided the answer to the security clearance application and to the interrogatories, in April 2009, the Applicant's brother had been living in Pakistan for two years, since 2007. I find that the Applicant intentionally and deliberately failed to disclose her siblings on the security clearance application and in her interrogatories because she thought that the information might jeopardize her chances of obtaining a security clearance.

I have taken official notice of the following facts concerning the country of Pakistan. Pakistan is a low-income country, with a population that is 97% Muslim. It has a coalition government led by Prime Minister Yousef Gilani and President Asif Ali Zardari, widower of assassinated Pakistan People's Party leader Benazir Bhutto. Although Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001, Pakistan reassessed its relations with the Taliban and pledged support to the U. S. and international coalition in Operation Enduring Freedom to remove the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leader of the Taliban, Mullah Omar, is operating openly in Pakistan. Extremists led by Pakistani Taliban (Tehrik-i-Taliban "TTP) commander Baitullah Mehsud and other al-Qaida extremists have re-exerted their hold over areas in the FATA and the North West Frontier Province (NWFP). The TTP has gained support by promising to fill a vacuum left by ineffective governments structures. Streams of Taliban financing crossing the border of Pakistan to Afghanistan has allowed the insurgency in Afghanistan to strengthen its military and technical capabilities.

In addition to the Taliban, the FATA in Pakistan continues to prove vital sanctuary to al-Qaida and a number of foreign and Pakistan-based extremist groups. The security situation in Afghanistan continued to worsen in 2008, including an increase in al-Qaida's presence to levels unseen since 2001-2002, driven in part by insurgent

access to safe havens in western Pakistan through the porous Afghan-Pakistan border. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency while also planning attacks against the U.S. and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda and obtain equipment and supplies.

The Pakistan Government has a poor human rights record. Reported human rights problems in Pakistan include extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread corruption, disappearance and imprisonment of political opponents, and trafficking in women and children. Pakistan creates concern for the United States because of weapon technology transfers and weapon technology cooperation with certain countries. Pakistan has also supplied nuclear technology to Iran and Libya and sought assistance from both North Korea and China for its own weapons programs.

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:

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact

creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16.(b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- 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 extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;

- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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 predicated 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) and Guideline E (Personal Conduct) 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 her 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 that 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 a foreign influence and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. 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 of record 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.

The evidence shows that the Applicant, who was born in Pakistan, has foreign family ties in Pakistan, a brother. It is not clear from the evidence presented as to whether her relationship with her brother in Pakistan is close or continuing and why he made such an odd change in plans. She states that she rarely communicates with her brother or with any of her siblings for that matter. However, she has been protective and not candid about their existence. Her unwillingness to disclose her brother's name and later his residency in Pakistan is troubling and indicates potential dishonesty, lack of trustworthiness and reliability. Given these facts, there is cause for concern in this case.

The Applicant has not been truthful or candid in answering the questions about her relatives, and given this strange and suspicious behavior, there may be something she is trying to hide from the Government. Thus, she may be in a vulnerable position and subject to coercion, exploitation and/or pressure by the Pakistani government. It is also noted that the current political situation in Pakistan elevates the cause for concern in this case. Pakistan creates concern for the United States because of weapon technology transfers and weapon technology cooperation with certain countries. Pakistan has also supplied nuclear technology to Iran and Libya and sought assistance from both North Korea and China for its own weapons programs. In this case, the possibilities are great that the Applicant may at some point be placed in a position to be forced to choose between the interests of a foreign individual, group organization, or government and the interests of the United States.

Under Foreign Influence, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the Mitigating Conditions apply. In this case, Applicant's brother in Pakistan, and the mystery that surrounds his existence, and her other siblings, creates a risk for foreign influence or exploitation, and she may become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, there is a possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. Thus, I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

The evidence further shows that the Applicant intentionally and deliberately falsified her security clearance application and her responses to interrogatories concealing the fact that she has seven siblings, one of whom resides in Pakistan. Applicant has provided no convincing evidence to establish that any mitigating condition applies. Had Applicant disclosed the existence of her siblings on her security clearance application and in response to the interrogatories, and indicated that her brother has resided in Pakistan for the past two years, her assertions that she is unaware of his

activities in Pakistan would have greater weight. However, given the Applicant's questionable behavior, the Applicant cannot be trusted with the national secrets.

Under Personal Conduct, Disqualifying Conditions 16.(a) *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,* and 16.(b) *Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* apply. None of the mitigating conditions are applicable. I find the Applicant has not been truthful or candid with the Government concerning her siblings and therefore cannot be trusted with the national secrets. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Furthermore, there is no evidence in support of mitigation under the whole person analysis. The Applicant has submitted no favorable recommendations or sufficient documentation to support security clearance eligibility. I have considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack a candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines B and E of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has failed to meet her ultimate burden of persuasion under Guidelines B and E.

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.
Subpara. 1.a.: Against the Applicant

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant
Subpara. 2.b.: 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