



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



In the matter of:)
)
) ISCR Case No. 09-04004
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esquire, Department Counsel

For Applicant: *Pro se*

May 28, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, I conclude that Applicant has mitigated the financial concerns, but has not mitigated the security concerns related to foreign influence. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) signed on March 25, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On December 23, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).² In his Answer to the SOR, signed and notarized on January 4, 2010, Applicant admitted all the allegations under Guideline B, and denied the two allegations under Guideline F. Department Counsel was prepared to proceed on March 3, 2010, and the case was assigned to me on March 7, 2010. DOHA issued a Notice of Hearing on March 25, 2010, and I convened the hearing as scheduled on April 20, 2010. The Government offered five exhibits, marked as Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered five exhibits, admitted without objection as Applicant's Exhibits (AE) A through E. I held the record open at Applicant's request to allow him to submit additional documentation. He timely submitted two documents, which were forwarded to me without objection by Department Counsel. I admitted the documents as AE F and G. DOHA received the transcript (Tr.) on April 29, 2010.

Procedural Ruling

At the hearing, the Government requested I take administrative notice of certain facts relating to the Islamic Republic of Pakistan (Pakistan). The facts are summarized at pages 1 through 7 of the request, and supported by eight documents pertaining to Pakistan (Hearing Exhibit 1). The documents are included to provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports in Hearing Exhibit 1. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 32 years old, submitted an application in 2009 to request a security clearance as part of his job as a security officer for a defense contractor. Since June 2006, he has also worked in a retail optical shop. He came to the United States at the

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

age of 15. He completed high school in 1998 and became a U.S. citizen in 2000. (GE 1; Tr. 42)

He was born in Pakistan. Applicant's deceased father worked for the U.S. Government at the American Embassy in Pakistan for 25 years as a driver and maintenance worker. When he retired, he was offered a visa to the United States for himself and his family. In 1993, he brought Applicant to the United States. He brought two of Applicant's brothers to the United States in the mid-1990s; they are now U.S. citizens. The remaining brother, with his wife and five children, came to the United States in 2006. He is not a U.S. citizen. Applicant's father died in 2005. (Tr. 24-28)

Applicant's mother, a citizen and resident of Pakistan, is a homemaker. He hopes to have her come to the United States to visit and to see his two-year-old son. He speaks with her by telephone about twice per month, and sends her about \$100 "every couple of months." He testified that she is surviving on the money the family sends her. He plans to sponsor her immigration to the United States in the future. However, his income does not meet the required level, so he is planning to work with his brothers to reach the necessary income to qualify. (GE 3; Tr. 38, 66-69) He is concerned about her safety in Pakistan. When asked about the plans to bring her to the United States, he testified that he has discussed the process with an attorney, "...because, honestly, back home, things are not going good right now. So I don't feel safe to have my mother over there." (Tr. 67) He said there is no unrest in her location, but he was concerned for her safety because,

Well, every time we see on news and everything, so a lot of people are scared to get out. You -- you get this news, suicide bomb or this going on and that, politics and, you know. (Tr. 68)

His three sisters, their husbands, and their children are also resident citizens of Pakistan. Applicant has nine nieces and nephews from his sisters' families. He has a good relationship with his sisters. He occasionally speaks them during calls to his mother in Pakistan. Applicant married in Pakistan in 2003. His wife, a homemaker, came to the United States in 2005, and resides with Applicant. She is a Pakistani citizen and a U.S. permanent resident. Her parents, two brothers, and three sisters live in Pakistan. Her father is a retired court clerk. (Tr. 30-32) Applicant's security clearance application lists one two-year-old son, who is a U.S. citizen by birth. (GE 1, 3; Tr. 28-30, 35-37)

Applicant has one older brother who is a resident and citizen of Pakistan. He also has three brothers, 29, 42, and 47 years old, who reside with him. Two are employed in retail businesses, and one is a maintenance worker. Two of his brothers are U.S. citizens. One of them has a wife and family who still reside in Pakistan. Applicant's other brother is a permanent resident. He worked for many years as an air-conditioning technician in the American embassy in Pakistan. He was given a visa to bring his family to the United States and they now live with Applicant. The family members living together in the same house with Applicant total 14. If Applicant brings his mother to the United States, she will also live with him. (GE 1; Tr. 33-35, 37-38, 57)

Applicant does not have bank accounts, real property, or other financial interests in Pakistan. He testified that if his mother passes away, her real property is likely to pass to her oldest son rather than Applicant. His family is aware that he is applying for a security clearance. Applicant traveled to Pakistan for four months in 2000, for two months in 2003 for his marriage, and for three months in 2004. (GE 1, 2; Tr. 55, 66)

In February 2006, when he was 28 years old, Applicant purchased a house for approximately \$530,000, with a down payment of approximately \$25,000. He obtained a first mortgage of \$416,000 and a second mortgage of approximately \$115,000. The monthly payment was approximately \$3,500. In 2005 and 2006, Applicant was working in a retail sales position with hourly pay plus commissions, and also as a bank teller at an hourly wage. His annual salary for each year was approximately \$35,000 to \$37,000. In about March 2006, Applicant lost both jobs. He was unemployed, doing only odd jobs, for about three months. He then obtained a retail position in June 2006, paying about \$35,000 annually. At first, Applicant's brothers, who were living with him, helped pay about half of the mortgage payments. Later, their financial support decreased. At about the same time, his brother was looking for a house. His three brothers purchased another house together. Applicant now lives with them in that house. (Tr. 39-45, 53-54, 60)

In 2009, Applicant's mortgage payments started to become delinquent. When he was unemployed, he stopped making payments. He did not resume payments for several months because his realtor advised him to stop and let the house go into foreclosure. Other than talking with his realtor, Applicant has not participated in any financial counseling. He failed to make payments for about seven months. By November 2009, he was \$30,000 delinquent on the first mortgage and about \$7,500 delinquent on the second mortgage. Applicant was concerned about foreclosure, and talked with his realtor about selling the house. In November 2009, the house sold at a short sale for approximately \$425,000. The first mortgage was paid in full, and Applicant was not responsible for a deficiency. However, the company holding the smaller loan would accept the short sale only if Applicant agreed to pay \$5,000 in 24 monthly payments of \$208.34. Applicant provided documentation showing his payments since November 2009. (AE A, B, C, E, F; Tr. 45-52)

Applicant's earnings statement, dated April 20, 2010, shows that he earned gross wages, during that two-week period, of \$1,325. After taxes and deductions, his net biweekly pay was \$1,189, or net monthly wages of approximately \$2,378. His monthly expenses include \$800 rent, \$200 auto expenses, \$100 for a cell phone, \$600 in food and child expenses, \$55 for cable/internet, and \$208.45 for his monthly mortgage deficiency payment. After deducting his total monthly expenses of \$1,964, he has a monthly net remainder of \$414. Other than the mortgage loans discussed previously, Applicant's 2009 credit reports show no delinquencies. (GE 4, 5; AE G)

Applicant provided a character letter from a co-worker, who is a doctor of optometry at the retail shop. She has known Applicant since 2007, and describes him as hard-working, dependable, and conscientious. She considers him to be a good citizen, who is trustworthy and upstanding. (AE D)

Administrative Notice

The Islamic Republic of Pakistan (Pakistan)

Pakistan is a parliamentary federal republic in South Asia. It is a low-income country, with a population that is 97 percent 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. Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001. However, Pakistan reassessed its relations with the Taliban and pledged support to the United States and the international coalition in Operation Enduring Freedom, which aimed at removing 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 operates openly in Pakistan. Extremists led by the Pakistani Taliban (Tehrik-i-Taliban "TTP") commander and other Al-Qaida extremists have re-exerted their hold over areas in the FATA and the North West Frontier Province (NWFP). Taliban financing, which crosses the border of Pakistan to Afghanistan, has allowed the insurgency in Afghanistan to strengthen its military and technical capabilities.

The security situation in Afghanistan worsened 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. Although Al-Qaida's core organization in the tribal areas of Pakistan was under greater pressure in 2009 than in 2008, it remained the most dangerous component of the larger Al-Qaida network. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to Al-Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States 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 Pakistani government has a poor human rights record. Reported human rights violations 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. As of February 2009, the government maintained domestic intelligence services that monitored political activists, suspected terrorists, the media, and suspected foreign

intelligence agents. The Department of State warns U.S. citizens of the risks of travel to Pakistan in light of threats of terrorist activity. Since 2007, American citizens have been kidnapped for ransom or other reasons. Credible reports indicated that authorities routinely intercepted and opened mail without requisite court approval, and monitored mobile phones and electronic messages.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B and F.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁶

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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. I have considered all the disqualifying conditions, and find that the following are relevant to the 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;
- (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;
- (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.

The possession of close family ties with a resident or citizen of a foreign country is not, of itself, disqualifying under Guideline B. However, the country in question must be considered. The Taliban and Al-Qaida operate in Pakistan. The permissive operating environment allows Al-Qaida to plan attacks against the United States and Western interests in Pakistan. Applicant testified to his own concerns for his mother's safety in Pakistan, commenting that the situation is not good, there are suicide bombings, and the population is fearful. Applicant currently shares living quarters with Pakistani citizens, including his wife and his brother. In addition, after he sponsors his mother's immigration to the United States, she will live permanently with him. Applicant's actions and the record evidence indicate that he has ties of affection and obligation to his family

members who are citizens and/or residents of Pakistan. Such ties represent a heightened risk of exploitation and support application of AG ¶ 7(a), (b), and (d).

I have also considered the mitigating conditions under Guideline B, ¶8, especially the following:

(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.

I cannot conclude that Applicant is unlikely to be placed in a position that could force him to choose between U.S. and foreign interests. He is bound by strong ties of affection to his wife and his brother, who are citizens of Pakistan. Moreover, he has close ties with his mother, who resides in a country that harbors terrorists and extremists, where human rights are violated, and the government intercepts telephone, electronic and postal correspondence. The record contains no evidence to show that Applicant's foreign relatives could not be subject to coercion that would force him to choose between their interests and those of the United States. AG ¶ 8 (a) cannot be applied.

In evaluating mitigation under AG ¶ 8(b), I considered the extent of Applicant's U.S. ties, including his 16 years living in the United States, the completion of his education, his years of marriage, and the fact that his son was born in the United States. However, Applicant has close relationships with foreign nationals. He has been married to a Pakistani citizen for seven years. He has ties to his brother, who lives in the same house with Applicant and is still a citizen of Pakistan. His concern for his mother's safety and his efforts to proceed with sponsoring her immigration to the United States demonstrate his strong ties of affection and obligation to her. Given Applicant's ongoing and strong ties to Pakistani citizens, I cannot confidently conclude he would resolve a conflict of interest in favor of the United States. AG ¶ 8(b) does not apply.

Applicant's has close, non-casual relationships with Pakistani citizens, including his wife and his brother. Moreover, Applicant's financial support to his mother, his strong desire and plan to sponsor her immigration to the United States, to bring her to live in his own home, and to support her here in the United States demonstrate his affection and sense of obligation to his mother. These facts raise a risk of foreign influence or exploitation. AG ¶ 8(c) does not mitigate Applicant's situation.

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Applicant purchased a relatively expensive house in 2006, when his income was modest. Applicant's credit reports show that he has not had a history of financial problems, other than the mortgage debt. Disqualifying condition AG ¶19(a) (*inability or unwillingness to satisfy debts*) applies. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains conditions that can mitigate security concerns. In this case, AG ¶¶ 20(a) and 20(b) are relevant.

AG ¶ 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) applies. Applicant's delinquency, which began in 2009, is recent. However, Applicant purchased the house when he was 28 years old and inexperienced with the process and possible consequences. Part of the difficulty may also reflect on the lender, who found applicant to be qualified for the loans, despite the large disparity between the cost of the house and applicant's annual income. It is unlikely that he will engage in such behavior in the future. Moreover, Applicant's adherence to the payment plan for the second mortgage and his otherwise solid credit reflect well on his reliability and trustworthiness.

Almost immediately after purchasing his house in 2006, Applicant lost his job. However, he was able to keep up with his mortgage payments between 2006 and 2009. Then his brothers stopped making the approximately 50 percent contribution to the

payments that they had been making. Neither his job loss nor his brothers' actions were under Applicant's control. He acted responsibly in light of these events. He took his realtor's suggestion to seek a short sale. He then agreed to the second lender's requirement that he pay \$5,000 toward the balance of the smaller loan. Finally, he followed through by making the payments over the past several months. AG ¶ 20(b) applies *(the conditions that resulted in the financial problem were largely beyond the person's control [e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation], and the individual acted responsibly under the circumstances)*.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has mitigated the concerns surrounding his past delinquent mortgage debt. His young age and financial inexperience at the time contributed to his unwise decision to take on a high mortgage when his income was insufficient. However, his solid credit before and since this mistake, and his adherence to his payment plan, assuage doubts about his reliability.

However, concerns remain about Applicant's foreign contacts. He maintains ongoing relationships with foreign nationals, including his mother, sisters, wife, and one brother. His attachment to his mother is evident in their continued contact, his concern for her safety, and his resulting desire to bring her out of an unsafe Pakistan and to the United States. He intends to sponsor her immigration to the United States, where she

will take up permanent residence with him. Moreover, Applicant's relationships are with citizens of Pakistan, a country that poses a heightened risk of exploitation.

For all these reasons, I conclude Applicant has not mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised under the guideline for foreign influence. Such doubts must be resolved in favor of the government.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. – 1.e.	Against Applicant
Paragraph 2, Guideline F	FOR APPLICANT
Subparagraphs 1.a. – 1.b.	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge