



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



In the matter of:)	
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)	ISCR Case No. 09-05267
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

February 16, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for an industrial security clearance. This case is based on foreign influence security concerns raised by Applicant’s ties or connections to Pakistan, a country where terrorist organizations are present. He closed a bank account and sold a property thereby ridding himself of any financial interests in Pakistan. His family ties, via his siblings and in-laws, are not strong due to geographic separation and a lack of interaction for many years. The evidence also shows Applicant has a depth of loyalty to the United States, so that he can be expected to resolve any conflict in favor of the U.S. interest. He demonstrated his commitment by working as a linguist supporting the U.S. armed forces’ mission of detainee operations at a location outside the continental United States. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on January 7, 2010. The SOR is equivalent to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline B for foreign influence. The SOR also recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's eligibility for a security clearance.

Applicant timely answered the SOR and requested a hearing. The case was assigned to two other judges before it was eventually assigned to me on September 7, 2010. The hearing took place pursuant to written notice on September 29, 2010. The hearing transcript (Tr.) was received October 5, 2010.

Procedural Matters

I took administrative or official notice of certain facts concerning the country of Pakistan as set forth in Department Counsel's written request.² In summary, the most pertinent of those facts are the following: (1) Pakistan is a developing country that borders India to the east and Afghanistan to the west; (2) Pakistan is a parliamentary federal republic with a population of about 170 million people that are 97% Muslim; (3) after September 11, 2001, Pakistan pledged its support to the U.S. and international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan, although members of the Taliban are still known to be in tribal areas of Pakistan; (4) in addition to the Taliban, the tribal areas serve as a sanctuary or safe haven to al-Qa'ida and a number of foreign and Pakistan-based extremist groups; (5) Pakistan has intensified its counterinsurgency efforts aimed at these groups, but its efforts have been mixed; and (6) Pakistan maintains several domestic intelligence services, which are used to monitor individuals and activities in Pakistan. These facts are incorporated into the findings of fact below.

Findings of Fact

In general, the SOR alleges that Applicant is unsuitable for a security clearance under Guideline B for foreign influence based on his ties or connections to Pakistan. In his Answer to the SOR, Applicant admits, with explanations, the specific factual

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines published in Enclosure 2 to the Directive.

² Appellant Exhibit I; Exhibits 6–12.

allegations in the SOR. In addition, the following facts are established by substantial evidence.

Applicant is a 57-year-old native of Pakistan and a naturalized U.S. citizen. He is seeking a security clearance for his employment as a Pashto and Urdu linguist. He has worked for his current employer, a federal contractor, since 2007. As a linguist, he worked in direct support of the U.S. armed forces' mission of detainee operations at a location outside the continental United States. This is the first time he has applied for a security clearance, completing an application in July 2007.³

Applicant is married. He and his wife have three children all of whom are U.S. citizens. The two oldest children were both born in Pakistan, but obtained U.S. citizenship via the naturalization process. His youngest child was born here. All three children are students at various levels of education. His wife is also a naturalized U.S. citizen. She is not currently employed outside the home, but she has been in the past.

Applicant was born, raised, and educated in Pakistan. He comes from a military family, as his father and his brother served in the Air Force. Applicant graduated from a Pakistani military academy in the mid-1970s. He then served in the Army, working as a junior officer in supply and transport until about 1982, when he resigned. He has had no further affiliation with the Pakistani military. He then obtained employment with a large multinational company. He worked for this company for several years, during which time he married in 1987. He changed jobs in 1989, when he began employment as a supply officer with an international organization that provides children with health care, clean water, nutrition, education, emergency relief, etc. His assignments included working in Pakistan and Kazakhstan. During this period of employment, Applicant and his immediate family immigrated to the United States in about 1994. He continued working for the international organization until 2002, when his job was abolished. He rejoined his family in the United States where he has since resided continuously. He became a naturalized U.S. citizen in 2006, he obtained a U.S. passport that year, and he has used that passport for any subsequent foreign travel.⁴

Applicant has had a varied employment history in the United States. Following a brief period of unemployment in 2002, he and his wife owned and operated a small company for several years. Applicant has also worked as an auditor. He obtained his current employment as a linguist after posting his resume with an online job service. His current annual salary is about \$100,000. He has a good employment record as verified by a highly favorable letter of recommendation from his program manager.⁵ In addition,

³ Exhibit 1.

⁴ Exhibit I.

⁵ Exhibit F.

Applicant has received multiple certificates of appreciation, from his employer and the U.S. armed forces, recognizing his exceptional duty performance as a linguist.⁶

Addressing the specific factual allegations in SOR ¶¶ 1.a through 1.f, the record establishes the following:

1. Applicant has three sisters and a brother who are citizens of and residents in Pakistan. He describes his relationships with his siblings as quite distant due to geographic separation and a lack of interaction since his immigration to the United States in 1994. For example, he has seen his sisters three times in the last ten years, once when he was in Pakistan to see his ill father and the other two during his parents' funerals. He has had no contact, to include telephonic or e-mail, with his brother for more than ten years, and he last spoke to him in 1999. He describes his siblings as busy with their own lives and families. He does not provide financial support to his siblings.
2. Applicant has a mother-in-law, four brothers-in-law, and a sister-in-law who are citizens of and residents in Pakistan. His relationship with these in-laws is as distant, if not more so, as that of his siblings. His relationship with his mother-in-law, an 80-year-old widow who lives with her oldest son, is distant as well.
3. Applicant inherited real estate in Pakistan that was once valued at about \$120,000. He delayed selling it after his father's death because his mother continued to live in the home. She passed away in 2008, the home was sold in August 2010, and the sale proceeds were transferred to the United States.⁷ A Pakistani bank account was also closed. All of Applicant's financial assets, which are not insubstantial, are now in the United States.⁸ These assets include a home for which Applicant has paid off the mortgage loan.⁹

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

⁶ Exhibits A, B, and E.

⁷ Exhibits C, D, E, and G.

⁸ Exhibits E and G.

⁹ Exhibit E.

It is well-established law that no one has a right to a security clearance.¹⁰ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁹

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

¹⁰ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

¹⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁰ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline B for foreign influence,²¹ the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign connections and interests. The overall concern under the guideline is:

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.²²

Of the several disqualifying conditions under the guideline, there are three that could raise security concerns and may be disqualifying in this case:

¶ 7(a) contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

¶ 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;

¶ 7(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

²² AG ¶ 6.

The first and second disqualifying conditions, ¶¶ 7(a) and 7(b), apply due to Applicant's ties or connections to Pakistan. This includes his past citizenship and residence in that country, his military service in the Pakistani army, and his family ties. The third disqualifying condition, ¶ 7(e), applies based on his real estate interest, which he obtained via inheritance when his father passed away.

The guideline also provides the certain facts and circumstances may mitigate foreign influence security concerns as follows:

¶ 8(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 United States;

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

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

¶ 8(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

¶ 8(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

¶ 8(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The first, second, and sixth mitigating conditions are most pertinent here and will be discussed below. The others are inapplicable given the facts of this case.

The first mitigating condition, ¶ 8(a), applies because Applicant's family ties to Pakistan are weak and distant and not of sufficient strength to be of concern in a security-clearance context. The second mitigating condition, ¶ 8(b), applies for two reasons. First, Applicant's sense of loyalty or obligation to his family members in Pakistan is *pro forma* or minimal. Second, based on his service as a linguist working in

detainee operations on behalf of the U.S. armed forces, as well as his immediate family and financial roots in the United States, I conclude that his significant relationships and loyalties in the United States are deep and longstanding and will remain so. As such, he can be expected to resolve any conflict of interest in favor of the U.S. interest. The sixth mitigating condition, ¶ 8(f), applies because Applicant no longer has any business, financial, or property interests in Pakistan. All such interests are in the United States.

This is not a case of “divided loyalties”²³ with an applicant who has one foot in the United States and one foot in his native country. On the contrary, the evidence shows Applicant has both feet in the United States and that he has substantial contacts and ties to the United States. Furthermore, his work as a linguist on behalf of the U.S. armed forces is persuasive evidence of his commitment to the United States. This circumstance does not dictate the outcome of the case, but it does receive favorable consideration under the whole-person concept.²⁴ Taken together, the totality of facts and circumstances support a conclusion that Applicant can be expected to resolve any potential foreign influence or pressure by either coercive or non-coercive means in favor of the U.S. interest.

To conclude, based on the evidence as a whole, both favorable and unfavorable, Applicant presented sufficient evidence to explain, extenuate, or mitigate the foreign influence security concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a–1.f:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²³ AG ¶ 6.

²⁴ AG ¶ 2(a)(1)–(9).