



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



In the matter of:)
)
) ISCR No. 09-06786
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Jeffreys, Esq., Department Counsel
For Applicant: Bernard N. Block, Esq.

July 26, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record as a whole, eligibility for access to classified information is denied.

History of Case

On February 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 25, 2010, and requested a hearing before an administrative judge. DOHA assigned the case to me on April 21, 2010, and issued a Notice of Hearing on April 26, 2010, scheduling the case for May 20, 2010. I convened the hearing on said date. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence, which were admitted without objection. Applicant testified, called one witness, and offered Applicant Exhibits (AE) A through F into evidence, which were admitted without objection. The record remained open until June 1, 2010, to give Applicant an opportunity to submit copies of documents introduced into the record. Applicant timely submitted those documents. DOHA received the hearing transcript (Tr.) on June 4, 2010.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Pakistan. After some argument, the request and the attached documents pertaining to Pakistan were admitted and are included in the record as Hearing Exhibits (HE) I through VIII. (Tr. 27-30.) The facts administratively noticed are limited to matters of general knowledge relating to Pakistan and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer, Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a through 1.g.

Applicant is 38 years old. He was born in Pakistan and attended high school there. In June 1993, he earned a bachelor's degree in political science from a Pakistani university. He also completed some hours in a master's program. His oldest brother provided financial support for his education. (Tr. 115.) Applicant speaks English and three Pakistani dialects. (Tr. 70.) In October 1995, he moved to a Middle-Eastern country to gain employment. He worked as a driver and valet. In September 1996, he immigrated to the United States for a more prosperous life at the age of 25. (Tr. 38; GE 5.) In March 1998, he married a U.S. citizen. They divorced on March 21, 2007. (*Id.*) He became a naturalized U.S. citizen on March 22, 2007.¹ (*Id.*)

After arriving in the United States, Applicant worked as a manager for a convenience store from April 1997 to November 2000. He then drove a taxi until January 2003 when he relocated to a different large city. He was unemployed for the next seven months and then began driving a taxi again. While unemployed, he supported himself from his savings. In December 2008, he applied for a linguist position

¹Applicant applied for citizenship in 2004. The process was delayed because of the Government's investigation into his 2001 and 2002 arrests that are described below. (Tr. 119.)

with the U.S. Army and completed a security clearance application (SCA). He became interested in the job for financial reasons and employment opportunities. He would like to serve the United States and assist with its mission in the Middle East. (GE 5; Tr. 67.) The Army denied his request for a security clearance based on his family living in Pakistan and the financial support he sends them. (Tr. 113, 121.) He completed his second SCA in May 2009, which is the basis for this proceeding. (GE 1, 2.) Currently, he leases a license to operate a taxi, which provides him with employment. (Tr. 72,)

Applicant returned to Pakistan twice since immigrating to the United States, once in June 2002 and again in August 2008. He stayed with his family for one month during each visit. (GE 3 at 151.) He does not intend to return to Pakistan in the near future. (Tr. 99.)

Applicant's parents were born in Pakistan. His father is deceased. He was a farmer. His elderly mother is a citizen and resident of Pakistan. She was a housewife. She owns farm property in Pakistan worth about \$30,000. (GE 5 at 51.) He calls his mother every two months. His two sisters and three brothers were born in Pakistan and reside there, along with their spouses and children. His two brothers-in-law and three sisters-in-law are citizens and residents of Pakistan. None of his family members reside in the United States or have visited the United States. (Tr. 121.) Applicant sent his family about \$1,000 every two to three months for about ten years, from 1998 to 2008, to help with their living expenses. (GE 5 at 50.)

Applicant's eldest brother retired as a staff sergeant from the Pakistani army in 2000, after 20 years of service. (Tr. 119.) Applicant talks to him when he telephones his mother because he resides with his mother and works on the farm. (Tr. 86.) Applicant's second eldest brother recently retired from the Pakistani army after 18 years of service. (Tr. 119.) He speaks to that brother once every three or four months. (GE 3.) Both of these brothers receive pensions from the Pakistani government. (Tr. 86.) His third eldest brother owns a grocery store. He speaks to this brother once every couple months. His eldest sister is a housewife and married to a private van driver. They have no government connections. (GE 3.) He speaks to her occasionally. (Tr. 88.) Applicant's youngest sister is a housewife and married to a banker. They speak once every four to six months. (GE 3 at 159-161.) Applicant told all of his immediate family members, except the sister that is married to the banker, of his application to become a linguist for the U.S. Army. (*Id.*)

Applicant's roommate was born in Pakistan. He recently became a U.S. citizen. He is a salesman of electronics. He has never returned to Pakistan since leaving it 22 years ago. Applicant has known him for about five years. (Tr. 92-93.)

Applicant does not own real property in the United States. He has approximately \$3,000 to \$4,000 in a U.S. bank account and about \$11,000 in personal property. (Tr. 94.)

Applicant disclosed that he was arrested twice since living in the United States. After his former wife moved out their apartment in August 2001, he rented a room in a boarding house. One evening, the Drug Enforcement Administration (DEA) raided the house, looking for illegal drugs. Everyone in the house was arrested and taken to the police station. He was released the following morning. No charges were filed against him. One of the tenants was charged with possession of illegal substances. (GE 5 at 7; Tr. 49-53.) Applicant was arrested a second time in March 2002. He used his friend's credit card to purchase gasoline and other items. Applicant later learned that his friend did not have authorization from his girlfriend to allow Applicant to use the card. Applicant pleaded guilty to a misdemeanor involving the use of stolen property, and paid a \$250 fine. (*Id.*; Tr. 56-57.) He said, "I thought I did have permission [to use the card], but that was the wrong judgment from my side." (Tr. 56.)

Applicant called one witness to testify. The witness was born in Pakistan and has lived in the United States since 1983. He became a naturalized citizen ten years ago. He has known Applicant for seven years, when Applicant began leasing a taxi from him to drive. He and Applicant have discussed Pakistan many times. He has no reason to doubt Applicant's loyalty to the United States. (Tr. 125-132.)

Applicant sincerely asserted his pride of U.S. citizenship and desire to serve the United States. He stated, "I am so glad, I'm so happy that I'm here in this country and a citizen of this country. It has given me everything to help my family, to help myself." (Tr. 148.)

Pakistan

I take administrative notice of the facts set forth in the Pakistan Hearing Exhibits. Pakistan is a parliamentary federal republic, created in 1947 after British India was partitioned when the British government granted India its independence. Pakistan was created for the Moslem population of the Indian sub-continent. Its population is about 60 million. It has a coalition government led by a prime minister and president elected in 2009. After September 11, 2001, Pakistan reassessed its relations with the Taliban and supported the U.S. and international coalition in their efforts to remove the Taliban from power. Many Islamic extremists and terrorists are known to inhabit parts of Pakistan, leading to a growth of their insurgency. Although Pakistan has intensified its efforts to deal with the violence and terrorists, the country continues to experience serious problems. The U.S. Department of State confirms that many border areas are known as safe havens for terrorists. Numerous suicide bombings and kidnappings have taken place over the past couple years. Human rights violations continue to be a significant problem, as killings, torture, and disappearances remain prevalent. The Pakistani government maintains domestic intelligence services. The U.S. Government warns Americans against travel to Pakistan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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.

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

Analysis

Guideline B, Foreign Influence

The security concerns relating to the guideline for foreign influence are set out in AG ¶ 6:

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

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying in connection with the facts alleged in the SOR:

- (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;² and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Since leaving Pakistan, Applicant periodically telephones his mother, three brothers, and two sisters, who are citizens and residents of Pakistan. All of them, except one sister, know that he is applying to work as a linguist for the U.S. Army in the Middle East. Applicant's relationship with his family in Pakistan could create a potential conflict of interest between his security obligations and desire to help them, in a situation wherein they were taken hostage or otherwise threatened with harm if he did not cooperate with terrorists or the government. Two of his brothers are retired from Pakistani military service, further raising the potential for conflict. Under either disqualifying condition, security concerns in this case arise in connection with the

² The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

potential that hostile forces might seek protected information from Applicant by threatening harm to his family in Pakistan.

Applicant's roommate recently obtained U.S. citizenship and has not returned to Pakistan since leaving it. The record does not contain sufficient information about him to eliminate him as a potential source of conflict.

The Government produced substantial evidence of the disqualifying conditions cited above, so the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides conditions that could mitigate security concerns under this guideline. Those with potential application in this case 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.

AG ¶ 8(a) does not have application under the facts in this case. Applicant admitted the SOR allegations that his mother, brothers, sisters, brothers-in-law, and sisters-in-law are citizens and residents of Pakistan. The family's physical presence in that country creates a heightened potential for exploitation, inducement, manipulation, pressure, or coercion, as there is strong evidence of suicide bombings and human rights abuses toward citizens and residents. That evidence makes it possible that Applicant's family interests could be threatened to the point that he would confront a choice between their interest and those of the United States should adverse forces learn of Applicant's work with the U.S. Army. Although none of the family members are currently connected to the government, Applicant's two brothers are retired military men, drawing pensions from the government, and could potentially have an interest in acquiring protected information or classified information for the government of Pakistan.

AG ¶ 8(b) has limited application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest."

Although he has lived in the United States since 1996, Applicant did not become a citizen until 2007, approximately three years ago. His economic ties are nominal. He has a small bank account and taxi lease. He has no family members living here and divorced his wife in 2007. He did not present any evidence of community involvement, advanced education, or other forms of evidence to demonstrate the development of deep affiliations for this country over the past 14 years. He did assert his pride of U.S. citizenship and desire to use his language skills to help the United States in its endeavors in the Middle East. In sum, Applicant's connections to Pakistan and his family there are more significant than his ties to the United States at this time.

Applicant maintains ongoing, albeit sporadic, communication with his family members in Pakistan and has provided financial support for over ten years. Hence, AG ¶ 8(c) cannot apply, as those contacts are sufficiently frequent, and not casual.

Whole-Person Concept

Under the whole-person concept, an 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. 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The Appeal Board requires that the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and human rights abuses in Pakistan. More importantly for security purposes, terrorists there are hostile to the United States, engage in violence against its citizens and residents, and actively seek classified information. Terrorists and friendly governments could attempt to use Applicant's family members to obtain protected information and

compromise Applicant's responsibilities to the United States. Second, Applicant had numerous connections to Pakistan before he immigrated to the United States in 1996. He spent his formative years there and was educated at a Pakistani university. Third, all of his family members are citizens and residents of Pakistan. None of them have visited the United States. He has sent financial assistance to them for over ten years out of his sense of affection, which is admirable but also indicative of his ongoing strong ties to them. Fourth, there is derogatory information about him in the record. In 2002, he was convicted of a misdemeanor that occurred as a result of his admitted "wrong" judgment.

Limited mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 14 years, and has been a naturalized citizen for three years. He did not return to Pakistan until June 2002. He has worked here since 1997 and has leased a taxi for the past several years. The owner of the lease believes Applicant is loyal to the United States. Out of his sense of patriotism for the United States, Applicant would like to assist the Government's endeavors in the Middle East.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline B.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against 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.

SHARI DAM
Administrative Judge