



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



In the matter of:)
)
) ISCR Case No. 09-07066
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

April 29, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's father is a citizen of Pakistan and lives with Applicant. His father has worked for another Middle Eastern country for 33 years and holds an important position of trust. Applicant's parents and mother-in-law have close and extended family members living in Pakistan. Through no fault of his own, Applicant was unable to mitigate the considerable foreign influence security concerns raised. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 4, 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 for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On August 16, 2010, DOHA issued Applicant a Statement of Reasons (SOR), which specified the basis for its decision - security concerns raised under Guideline B (Foreign Influence) of the adjudicative guidelines (AG).²

Applicant answered the SOR on September 11, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 21, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on November 3, 2010, convening a hearing on November 30, 2010.

At the hearing, the Government offered exhibits (GE) 1 through 5. GEs 1 through 3 were admitted without objection. GEs 4 and 5 were received, without objection, for administrative notice purposes only. Applicant testified and presented the testimony of one witness. DOHA received the transcripts of the hearing (Tr.) on December 6, 2010 and January 26, 2011.

Procedural Issue

During the November 30, 2010 hearing, the Government moved to amend the SOR to add allegation "1.c. You and your wife have extended family members who are citizens and residents of Pakistan." Applicant objected and I required the Government to serve Applicant with the proposed amendment in writing. Applicant was served the amended SOR on November 30, 2010, and he answered it on December 24, 2010. The notice of continuation of hearing was issued on December 22, 2010, and the hearing was reconvened on January 19, 2011.

Findings of Fact

Applicant admitted all the factual allegations in the SOR. He denied, however, the Guideline B general policy security concern set forth under SOR ¶ 1. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 31-year-old senior information technology assurance and security officer employed by a defense contractor. Applicant and his sister were born, raised, and educated in the United States. He attended college in the United States from 1997 until 2003, and from August 2006 until January 2007, but he did not finish his degree. He started working for his current employer, a government contractor, in March 2007. Shortly thereafter, he was issued a security clearance at the secret level. In May 2009, he was issued an interim top secret clearance. He is considered to be a good employee. There is no evidence that he has compromised or caused others to compromise classified information.

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

Applicant's parents moved to the United States in 1978. His mother was born in India, and she is now a naturalized U.S. citizen. She has been a homemaker all of her life. His father was born in Pakistan, and he is a Pakistani citizen with permanent residence status in the United States. They both live with Applicant in his home.

Applicant's father worked at the embassy of a Middle Eastern country in the United States since he entered the United States in 1978. His father has an important position at the embassy. His father testified that he has no diplomatic or governmental related duties. Through the years, Applicant's father and his family visited the embassy for festivals and on special occasions.

Applicant's maternal grandfather worked for the Pakistani ministry of foreign affairs and performed duties in a high-level position. (Tr. 71) Applicant's mother has a sister and a stepsister who are residents and citizens of Pakistan. She has contact with them approximately six times a year, usually during religious holidays or special family occasions.

Applicant considers himself to be a loyal, hardworking American. He loves the United States. He has worked in the United States since age 15, and always pays his taxes. The last time he visited Pakistan was 12 years ago, around 1995-1996. He was approximately 16 years old, and his parents took him and his sister to Pakistan to visit with their relatives living in Pakistan. Applicant noted that he has numerous family members living in the United States who have been granted access to classified information. He averred he has limited personal contact with any of his extended family members living in Pakistan. Most of the contacts with family members living in Pakistan are maintained by his father and his wife's relatives. Applicant owns a house in the United States and has some investments in the United States.

Applicant's paternal aunt lives in Pakistan. Applicant averred he only has contact with his aunt through his father. His father and his aunt have telephonic contact approximately twice a month. They also call each other during religious holidays and special family occasions. His father used to send money to his sister, but Applicant indicated his aunt is no longer accepting the financial assistance.

Applicant married his wife in January 2006. She was born in Pakistan, but she is now a naturalized U.S. citizen. As of the hearing day, Applicant and his wife were expecting a child. His parents-in-law were both born in Pakistan, but they are now naturalized U.S. citizens living in the United States. Apparently, they travel to Pakistan every two years. His mother-in-law has a sister that lives in Pakistan as well as other extended family members. His wife's aunt works in Pakistan as a teacher. She travelled to the United States to attend Applicant's wedding. Applicant's wife has not visited Pakistan since around 2000-2001. Applicant claimed that none of his relatives living in Pakistan work for the Pakistani government or any other foreign government.

I take administrative notice of the following facts. Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an 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 operates openly in Pakistan, as do extremists from the Pakistani Taliban and Al Qaida. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. 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 extremist 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. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high-profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistani civilians and security force personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other personal reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistani government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail without the requisite court approval, and also monitor phones and electronic messages. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut-off military aid to Pakistan for several years.

I also take administrative notice of the following facts concerning the Middle Eastern country of X. The government of X sponsors many social welfare programs. X is an important partner in the ongoing U.S.-led campaign against international terrorism,

providing military, diplomatic, and intelligence assistance and supporting efforts to block financing of terrorist groups. While X has made progress in combating terrorism, it lacks legal provisions that deal specifically with terrorism, and it lacks comprehensive legislation that criminalizes terrorist financing.

The government of X engages in human rights abuses which include limits on freedoms of speech, press, religion, and movement for certain groups; government corruption and trafficking in persons; and violence against women. X placed some limits on the rights of free religious practice, and religious minorities experienced some discrimination as a result of government policies. It also limits the rights of its citizens to change their government and form political parties.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The government’s concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out three conditions that could raise a security concern and may be disqualifying in this case, including:

(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; and

(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 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.³ Applicant, by himself or through his wife and his parents, has frequent contacts (at least twice a month) and a close relationship of affection and/or obligation with his aunt, his wife's aunt, and other extended family members who are residents and citizens of Pakistan. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Pakistani agents, criminals, or terrorists operating in Pakistan may exploit the opportunity to obtain information about the United States.

Moreover, Applicant's parents live with him in his house. His father is a citizen of Pakistan. He has been employed for the last 33 years by another Middle Eastern country in an important trust position. Applicant's connection to his family members in Pakistan and with his father in the United States creates a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help them by providing sensitive or classified information.

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.;

³ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that none of the mitigating conditions apply. Applicant has strong feelings of affection and a strong sense of obligation to his parents, both of whom live with him. Applicant's father is a citizen of Pakistan and has been employed by the government of X for the last 33 years in an important position. Although he claimed not to be involved in any political business, Applicant's father's Pakistani citizenship and long-term employment by the government of X create a heightened risk for foreign influence or exploitation not mitigated by Applicant's favorable evidence.

In deciding whether Applicant's family members are in a position to be exploited, I considered Pakistan and X's forms of government.⁴ The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Pakistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his parents and extended family members living in Pakistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his parents or their relatives living in Pakistan who might be coerced by terrorists or other governmental entities in Pakistan or X.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States

⁴ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Pakistan or X seek or have sought classified or economic information from or through Applicant, his father, or his relatives living in Pakistan, it is not possible to rule out such a possibility in the future. Applicant's parents live with him and they have siblings in Pakistan. Applicant continues to feel an obligation to them and affection for them. Applicant's concern for his father is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence.

Applicant did not establish that it is unlikely he will be placed in a position of having to choose between the interests of his family and the interests of the United States. Additionally, Applicant's grandfather (his mother's father) was also employed by the government of Pakistani in a high-level position. Thus, it is more likely that the government of Pakistan is aware of his father's and his family's whereabouts.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his father and other family members living in Pakistan. I note the United States' recent relationship with Pakistan, especially Pakistan's systematic human rights violations, and the ever present danger from terrorists and those who seek to damage U.S interests. The conduct of terrorists in Pakistan makes it more likely that terrorists would attempt to coerce Applicant through his father and his relatives living in Pakistan, if they determined it was advantageous to do so. Moreover, Applicant's father lives with Applicant. His father holds an important position with the government of X. His father's long-term working relationship with another foreign country is a security concern. Considering the totality of the circumstances, Applicant has failed to mitigate the Guideline B security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

Applicant was born, raised, and educated in the United States. As such, he has deep and longstanding relationships and loyalties in the U.S. He has family connections to the United States via his sister and extended family members living in the United States. His spouse is a naturalized U.S. citizen, and as of the day of the hearing, they were expecting a child that likely will be born in the United States. Applicant owns a house in the United States and has some investments in the United States.

There are some facts supporting mitigation of security concerns. Applicant considers the United States to be his home. He has strong connections to the United States. He was born, raised, and educated in the United States. He is a productive member of American society. Since 2007, he has been working for a government contractor and received access to classified information at the secret level. He is considered to be a good employee. There is no evidence that he has compromised or caused others to compromise classified information. His spouse is a naturalized U.S. citizen. She and her mother and Applicant's parents live in the United States.

Notwithstanding, the circumstances supporting the denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance. Applicant's parents and his mother-in-law have immediate family members that live in Pakistan. His father is a Pakistani citizen who works in an important position for the government of X.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation in Pakistan, as well as the dangers existing in Pakistan. The danger of coercion from terrorists in Pakistan is more likely than in many other countries. Although Pakistan and the United States are allied militarily, diplomatically, and through trade, the Pakistan government has had significant difficulty maintaining order within its borders and in the suppression of terrorists. I have continuing doubts that Applicant, his parents, or family members living in Pakistan will remain safe from terrorist coercion should Applicant receive access to classified information. Moreover, his father's long-term, close relationship with another foreign country is a security concern. Through no fault of his own, Applicant was unable to mitigate the considerable foreign influence security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated foreign influence security concerns.

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 and 1.c:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge