



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



In the matter of:)
)
) ISCR Case No. 10-02015
)
)
Applicant for Security Clearance)

Appearances

For Government: William O'Neill, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is granted.

On June 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 3, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 1, 2010, and reassigned to me on October 18, 2010.

DOHA issued a Notice of Hearing on October 18, 2010.¹ I convened the hearing as scheduled on November 15, 2010. The Government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted. The Government requested administrative notice be taken of certain facts relating to Pakistan as contained in Hearing Exhibit (HE) I. Applicant had no objection and I took administrative notice of the source documents. Applicant and three witnesses testified. Applicant offered Exhibits (AE) A through C, which were admitted without objections. DOHA received the hearing transcript (Tr.) on November 29, 2010.

Findings of Fact

Applicant admitted the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. In 1994, he immigrated to the United States from Pakistan, with his parents when he was about 14 year old. He went to high school in the United States. He earned a bachelor's degree with a dual major in 2002. He earned a master's degree in 2007, while he was working. He is presently enrolled in an accelerated Ph.D. program at a prestigious U.S. university. He has completed the course work and is currently working on his dissertation.²

When Applicant met all of the citizenship requirements he immediately applied to become a naturalized citizen of the United States. He became a naturalized U.S. citizen, along with his parents, in 2000. He stated he became a United States citizen by choice. He has held a Secret security clearance since 2003. He is firmly committed to the United States and wants to see his children grow up in this country and be afforded its opportunities.³

Applicant became engaged to his wife when he was visiting Pakistan. He obtained a fiancée visa for her. They married in the United States in April 2004. His wife is a naturalized citizen of the United States. They have two sons, one is two years old and the other is one month old. Both were born in the United States.⁴

Applicant's father and mother lived in the United States after they immigrated. They decided to immigrate to afford more opportunities for their children. His father passed away in 2008. He left instructions that, although he had a burial plot in Pakistan, he wanted to be buried in his adopted country, the United States. His wishes were respected. Applicant's mother lives with Applicant in the United States. It was her brother who originally sponsored the family to enter the United States. She has four

¹ Applicant affirmed on the record that he received written notice of hearing 15 days prior to the hearing.

² Tr. 25-28, 40.

³ Tr. 10, 25, 38-39, 44.

⁴ Tr. 74-75.

brothers and a sister who are all citizens and residents of the United States. All of their children are also citizens and residents of the United States.⁵

Applicant has two sisters and a brother. His sisters are dual citizens of Canada and Pakistan. One sister now lives in Canada permanently. Her husband has a land development business in Pakistan. He lived in Canada from the middle of the 1980s to 2008. They both lived in Pakistan from 2008 to 2010, but because of safety reasons and their inability to adjust there, they decided to move back to Canada in March 2010. Her husband is commuting between Canada and Pakistan, until he can sell the business and move to Canada permanently. They have three teenage daughters who are dual citizens of Canada and Pakistan. According to Applicant, his sister does not intend on returning to Pakistan to live.⁶

Applicant's other sister is a dual citizen of Canada and Pakistan. She resides in Pakistan most of the year, but has a home in Canada where she goes to vacation. Her husband works for the Pakistani government as a civil servant. He has worked in this capacity for about six or seven years. He is thinking of retiring in the next two years. They have one daughter who is completing high school in Pakistan and intends on going on to medical school in Pakistan. Applicant anticipates they will remain in Pakistan because of Applicant's brother-in-law's job and his niece's education. However, once he retires he may move to Canada. Applicant stated that both of his sisters have travel visas for the United States for which they had to go through a background investigation with the United States Immigration and Custom Enforcement.⁷

Applicant's brother came to the United States in 1993 and has a permanent residency card. He intends to apply for U.S. citizenship. He is married to a naturalized United States citizen. They have two children. One was born in the United States and one was born in Pakistan. Applicant explained his sister-in-law experienced complications during her pregnancy and was required to have complete bed rest. She went to Pakistan for a period of time and her grandmother cared for her. Her child was then born in Pakistan. Her parents live in the United States.⁸

Applicant's wife's family are all citizens and residents of Pakistan. His mother-in-law visits frequently and is presently staying with them, helping with her new grandchild. Applicant's father-in-law works as a bank manager. Applicant believes he works for a national bank of Pakistan, but is not sure of the relationship it may have with the government. His father-in-law has worked for the bank since the 1970s. He intends to retire from his job in December 2010. The retirement age is 62, but his father-in-law remained working, and is 66 years old. His parents-in-law have United States multiple

⁵ Tr. 38, 40, 44, 71, 83-86.

⁶ Tr. 23, 41, 47-53.

⁷ Tr. 24, 34, 53-60.

⁸ Tr. 41-47.

entry travel visas. He explained to obtain one, they had to have a background check. He believes his in-laws intend on moving to the United States in the future, after his father-in-law's retirement.⁹

Applicant's wife has two sisters who are citizens and residents of Pakistan. One sister is married and her husband runs a furniture store. They have an infant child. The other sister is 16 years old and a student.¹⁰

Applicant stated none of his or his wife's relatives are involved in the Pakistani military or politics. He does not discuss his work with his family, although his wife is aware of his job.¹¹

Applicant had a bank account in Pakistan, but recently closed it so it would not create a security concern. He does not own any property in Pakistan and he is unaware of any inheritance rights he may have. Applicant estimated his net worth in the United States was between \$300,000 and \$400,000. He owns a house in the United States.¹²

Applicant traveled to Pakistan in 2000, 2001, twice in 2004, 2006, and 2008. He travels there exclusively to visit family and for special events, such as weddings. He anticipates his wife will go to Pakistan in the next five to six months to introduce their new son to her relatives. Applicant does not anticipate accompanying her. When Applicant visits Pakistan, he stays with his in-laws. Prior to traveling, he always notifies his security manager and follows all procedural protocols.¹³

Applicant admitted he speaks frequently with his relatives in Pakistan. He estimated he speaks to his in-laws about once every two months. He talks to his sisters about once a month. Their discussions are only about family matters. He stated he has no need to discuss anything else with them.¹⁴

Applicant discussed that his family lives outside of the Federally Administered Tribal Areas (FATA). This is the area where there is significant violence and terrorist activity. He stated that all of his relatives have jobs and none are involved in any criminal activity.¹⁵

⁹ Tr. 24, 35-37, 60-64.

¹⁰ Tr. 64-65.

¹¹ Tr. 72-79.

¹² Tr. 23-24, 65-66, 86-87.

¹³ Tr. 29, 66-69.

¹⁴ Tr. 37, 69-70, 72-74, 89-91.

¹⁵ Tr. 30-34.

A character witness who has known Applicant since 1998 testified on his behalf. He has held a Top Secret security clearance for 15 years. He knows Applicant both professionally and personally. He worked with him from 1998 to 2003. He knows Applicant's family and has been to his home. He met Applicant's in-laws when he visited Pakistan. Based on all of his contacts with Applicant's family he does not have any security-related concerns. He did not notice any illegal activity nor was there anything suspicious. He recommended Applicant be granted a Top Secret security clearance.¹⁶

Applicant's security manager testified on his behalf. She has known him since October 2003, and they see each other approximately three times a week. He has not had any security violations. He follows all of the procedures and regulations. He has never left any classified information unattended. He made her aware of all of his trips to Pakistan, as required. She does not have a concern that he will compromise national security. She recommends him for a Top Secret security clearance.¹⁷

Applicant's program manager testified on his behalf. Applicant is his lead engineer, and he has known him since December 2006. They see each other daily and their offices are next to each other. They also see each other socially. He is aware of Applicant's background and his family. He believes Applicant is very security conscious and would never divulge information outside an appropriate setting. He has never observed Applicant violate any security rule. He recommends Applicant be granted a Top Secret security clearance.¹⁸

Applicant provided two letters of appreciation he received from the United States Special Operations Command for his exceptional work. He provided a map to show where his family lives in Pakistan, noting it is outside of the FATA.¹⁹

Pakistan²⁰

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. 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 FATA of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leaders of the Taliban operate openly in Pakistan. Extremists led by the Pakistani Taliban (Tehrik-i-

¹⁶ Tr. 94-100.

¹⁷ Tr. 100-104.

¹⁸ Tr. 104-114.

¹⁹ Tr. 28-29; AE A, B.

²⁰ HE 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 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.

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, widespread 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

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 list potentially disqualifying conditions and mitigating conditions, which are used 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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. The following are potentially applicable:

- (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; and
- (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.

Applicant has two sisters who are dual citizens of Canada and Pakistan. One sister's primary residence is in Pakistan and the other's primary residence is in Canada. He has two brothers-in-law who are dual citizens of Canada and Pakistan. One is employed by the Pakistani Government as a civil servant. They each spend time in both countries. Applicant's parents-in-law, and his wife's two sisters are citizens and residents of Pakistan. Applicant traveled to Pakistan in 2000, 2001, twice in 2004, 2006, and 2008 to visit his family and his wife's family.

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, even 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.

Most nations with substantial military establishments seek classified and sensitive information from the United States because it has the largest military industrial complex and most advanced military establishment in the world. Pakistani military officials could potentially seek or accept classified information from U.S. citizens with access to this material. Applicant's access to classified information and his connection to his family could create a potential conflict of interest. I find AG ¶¶ 7(a), 7(b), and 7(d) applies. I

find AG ¶ 7(e) does not apply because Applicant no longer has any financial or property interests in Pakistan.

I have also analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

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. 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, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Pakistan has pledged its alliance with the United States in counterterrorism efforts, but terrorist organizations are known to be operating openly in Pakistan. Pakistan's human rights record is poor and there is a risk for U.S. citizens traveling there.

Applicant has familial relationships with his siblings and his wife's family in Pakistan. When he travels to Pakistan, it is to visit his relatives. Although Pakistan is an ally with the United States in the war on terrorism, their diplomatic history is precarious. The fact that militant and terrorist groups operate openly in Pakistan is a cause of concern. I find the nature of the relationship that Applicant has with his family is more than casual and infrequent. I also find because Pakistan continues to have human rights problems and terrorists use Pakistan as a sanctuary, I cannot find that it is unlikely that Applicant will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Therefore, AG ¶¶ 8(a) and 8(c) do not apply.

Applicant's ties to the United States run deep. He immigrated to the U.S. as a boy with his parents. He attended high school and college in the U.S., earning a bachelor's

degree, master's degree, and is in the final stages of earning a Ph.D. at a U.S. university. He became a naturalized U.S. citizen by choice. His mother and father both became naturalized citizens. His father passed away and wanted to be buried in the United States. His mother lives with him and his family in the United States. Applicant's wife is a naturalized U.S. citizen. Both of his children were born in the United States and are U.S. citizens. Applicant's assets total approximately \$300,000 to \$400,000 and are in the United States. Applicant has held a Secret clearance since 2003, without incident. He has earned the accolades of his supervisors. Applicant has some ties to his siblings and their spouses that have dual citizenship with Canada and Pakistan, and his brother-in-law who has a civil servant job in Pakistan. It appears that his wife also has family ties in Pakistan.

I have had the opportunity to rigorously question Applicant and resolve any questions. I find that, although Applicant has family ties in Pakistan, he has a deep and longstanding relationship with the United States. His life and that of his immediate family is entrenched in the United States. He has held a security clearance for seven years, without incident. His children were born in the United States and he and his wife have chosen to raise their family here. There is no evidence that Applicant's family members living in Pakistan are political activists or that they have high profile jobs with the Pakistani Government. There is no evidence that his family members currently engage in activities that would bring attention to them. There is no evidence that terrorists or any anti-U.S. elements are aware that Applicant has family living in Pakistan. His family lives outside of the turbulent FATA area. Applicant made the decision as an adult to become a citizen of the United States. I find his connections to the United States are stronger than his connection to Pakistan. He has persuaded me that his loyalty to the United States is steadfast and undivided and he can be expected to resolve any conflict of interest in favor of the U.S. interest. I find AG ¶ 8(b) applies.

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 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.

Under 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant immigrated with his parents to the United States when he was a boy. He spent his formative years here attending school and completing his education. His parents chose to raise their family here and his father chose to be buried in the United States. Applicant's mother continues to live with Applicant and his wife. He has worked for a federal contractor since 2003, and held a Secret security clearance since then. Applicant's wife is a naturalized citizen of the United States and his children were born in the U.S. Applicant has family ties to Pakistan. He has made trips there to visit his family. Some of his family has dual citizenship with Canada and Pakistan. I have carefully considered all of the evidence and I am convinced Applicant's roots are firmly planted in the United States. I am also convinced that should there ever be a conflict of interest, Applicant would clearly resolve it in favor of his adopted country due to his steadfast commitment to the United States.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

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: | FOR APPLICANT |
| Subparagraphs 1.a-1.f: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge