



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



In the matter of:)
)
) ISCR Case No. 10-02098
)
Applicant for Security Clearance)

Appearances

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

November 16, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On November 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. 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 on December 19, 2010, and elected to have her case decided on the written record. On June 28, 2011, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant

and it was received on July 23, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on August 16, 2011.

Procedural Rulings

I reviewed the FORM and noted that an Administrative Notice request was referred to in the Government's brief, but was not included in the FORM. It was also unclear if Applicant had received the source documents referenced in the brief. Applicant was not provided a copy of the documents. On October 4, 2011, I issued an Order directing the Government to provide Applicant the above-mentioned documents.¹ Applicant received the documents and the Administrative Notice Request. On October 18, 2011, Applicant responded and had no objections to the material and did not intend to submit additional information.²

Request for Administrative Notice

Department Counsel submitted a formal Administrative Notice Request that I take administrative notice of certain facts relating to Pakistan, which is granted.³ The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's answer to the SOR, she admitted all of the allegations except ¶ 1.b. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. She has worked for a government contractor since November 2008. She was born in Pakistan. She married in 1978 and was divorced in 2007. She became a naturalized U.S. citizen in May 1999. Applicant has four children, all of whom were born in the United States and are U.S. citizens. They are 32, 27, 25, and 23 years old.

Applicant has three brothers who are citizens and residents of Pakistan. Her eldest brother retired in the rank of Major from the Pakistani army. He served from 1972 to 1990. Her two other brothers are accountants. None of them have any affiliation with the Pakistani government. There was no information regarding the brother's spouses or children.

¹ The Order is marked as Hearing Exhibit (HE I).

² HE II.

³ The Administrative Notice Request is marked as HE III.

Applicant has three sisters who are citizens and residents of Pakistan. They are all housewives. They are not affiliated with the Pakistani government. There was no information about her sisters' spouses or children.

Applicant stated in her interview with an Office of Personnel Management investigator that she has not had any contact with any of her family in Pakistan since she and her husband divorced. She indicated that in her culture and religion divorce is a shameful act, and her family is upset with her. She indicated she has not had contact with any family since 2006. Prior to then, she had regular contact. She visited her family once every three to four years and had regular telephone contact about six times a year from 1978 to 2006. She did not provide any other information about her family ties in Pakistan. There is no information about whether her children maintain any ties with her family or her ex-husband's family in Pakistan.⁴

Applicant owned land in Pakistan. In her response to the FORM she stated:

[D]uring our marriage my ex-husband buil[t] a house [i]n my name in [P]akistan. [W]hen [I] was in [P]akistan in 2006 I [gave] that house to my sister. [Because] [I] was planning to file for divorce and [I] know after [I] file for divorce [I] will not be able to come to [Pakistan]. [B]ecause divorce is a shameful thing in that part of country, but my ex-husband throw them out and put his side of the family in house, so[it's] his house now.

[M]y ex-husband family [gave] me land in the marriage [contract] and even the court give it to me in the divorce settlement, but his family took it back and [it's] not mine any more. [B]ecause in [I]slam if a lady file for divorce she [loses] the marriage [contract].

[M]y father owned a lot of land, but he transfer[red] to his sons name. [S]o therefore [I] own nothing there and do not want to own anything there.⁵

No other information was provided about Applicant's property in Pakistan. It is unknown whether or not she is legally entitled to the land or whether her children could inherit the land.

There are 15 delinquent debts totaling approximately \$80,150, alleged in the SOR. Applicant stated in her interview that she was unaware of the delinquent accounts because her ex-husband took care of all of the finances, and she had very little knowledge of the family finances. She stated that her ex-husband had complete control over the finances. He was a professional with a substantial income and business. She was awarded alimony in the divorce, but it is unclear if she receives it. She claimed that as part of the divorce decree, her ex-husband was responsible for paying the debts, except her car payment. However, paragraph 21 of the divorce decree states:⁵ "Except

⁴ Record.

⁵ Response to FORM.

as otherwise provided herein, each party shall be responsible for paying his or her own debts.”⁶ None of the debts listed on the SOR are included in the divorce decree. Applicant’s position is she did not know about the delinquent debts, and she never checked her credit report. She also stated that she moved after her divorce, so she did not receive delinquent notices. She believes her ex-husband may have purposely tried to ruin her credit by not paying the bills. She did not provide any evidence for her assertions. She did concur that eleven of the debts were ones she and her ex-husband had accounts with and the credit report balances appeared accurate. She did not provide specific information as to which debts she believes belong exclusively to her husband.⁷

Applicant provided a letter from a debt relief company that indicated she enrolled with the company in June 2010 to resolve 11 of the 15 debts alleged in SOR ¶¶ 2.c through 2.n. She stated she paid the debt in SOR ¶ 2.a. It is unclear after a review of the documents whether this debt is paid. Applicant provided a document from her debt relief company that indicated payments were made in May, June, July, and August of 2011. There is no further information to determine if she had been making payments since June 2010. There is no additional evidence to conclude if any of her delinquent debts in the plan have been satisfied. There is no evidence regarding the status of the remaining debts not included in the plan. I do not have enough evidence to conclude the current status of the delinquent debts alleged in the SOR.

Applicant provided as part of her responses to interrogatories proof that she made payments for other debts she owed.⁸ She did not provide an updated financial statement and other information regarding her current financial situation, including whether she is still receiving alimony.

Pakistan⁹

Pakistan has extensive terrorist networks operating within its borders. Members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk) (formerly known as the Northwest Frontier Province (NWFP)), and in the Balochistan Province, which borders Iran and Afghanistan. The leader of the Taliban, Mullah Omar, operates openly in Pakistan. The Pakistani Taliban (Tehrik-i-Taliban “TTP”), al-Qa’ida extremists, foreign insurgents, and Pakistani militants have re-exerted their hold over areas in the FATA and Kpk, and the Pakistani Taliban also used the FATA to plan attacks against civilian and military targets across Pakistan. Al-Qa’ida leadership

⁶ Answer.

⁷ Record; Answer.

⁸ Item 8.

⁹ HE III.

in Pakistan supported militants in conducting attacks in Afghanistan and provided funding, training, and personnel to facilitate terrorists and insurgent operations.

In addition to the Taliban, the FATA in Pakistan continues to be a vital sanctuary to al-Qa'ida and a number of foreign and Pakistan-based extremist groups. Al-Qa'ida and other Afghan extremist groups exploit that operating environment to plan operations, direct propaganda, recruit and train operatives, and raise funds.

* * *

The U.S. Department of State has concluded that, despite increased efforts by Pakistani security forces, al-Qa'ida terrorists, Afghan militants, foreign insurgents, and Pakistani militants continue to find safe haven in portions of Pakistan's FATA, Kpk, and Baluchistan, and have operated in those areas to organize, train, and plan attacks against the United States and its allies in Afghanistan, India, and Europe.

* * *

In addition to al-Qa'ida, the Taliban, and other insurgents and militants, the foreign terrorist organization Lashkar e-Tayyiba (LT) also operates out of Pakistan. The LT is the prime suspect for the November, 2008 Mumbai attacks, and is one of the largest and most proficient of the traditionally Kashmiri-focused militant groups.

The Department of State warns U.S. citizens of the risks of traveling to Pakistan in light of the threat of terrorist activity, specifically the presence of al-Qa'ida, Taliban elements, and indigenous military sectarian groups that pose a danger to American citizens. In the last three months of 2009, Pakistan-based extremists and al-Qa'ida conducted at least 40 suicide terrorist attacks in major cities in Pakistan, killing about 600 Pakistani civilians and security force personnel.

* * *

Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Suicide bombings and attacks occur through Pakistan on a regular basis. Also, several American citizens throughout Pakistan have been kidnapped.

The human rights situation in Pakistan remains poor. Major problems include extrajudicial killings, torture, and disappearance. Additional problems include poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in persons.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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. I have considered all of them and the following are potentially applicable:

- (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
- (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 six siblings who live in Pakistan. She traveled to Pakistan in 2001, 2002, 2003, and 2006. Applicant may own land in Pakistan. It is unclear what the current ownership status is regarding the land. I find the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and 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

(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.

In Applicant's answer to the SOR, she indicated she does not have any contact with her family. She stated she is estranged from them because she and her husband are divorced and this is a shameful thing in her culture. It appears that it is her relatives who have chosen not to associate with Applicant. It does not appear that Applicant is the person who has broken ties with her family. It is unclear if Applicant would reconcile with her family if they made the offer. There is insufficient evidence to conclude that her familial connections and the nature of her relationship with her family make it unlikely that she would be placed in a position of having to choose between their interests and the interests of the United States.

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 foreign government, or the country is known to conduct intelligence operations against the United States. Applicant has numerous family members who are citizens and residents of Pakistan. Her brother is a retired officer of the Pakistani army. It is clear that Pakistan has numerous terrorist organizations that target U.S. citizens. Pakistan's human rights record is poor. Applicant's apparently has not had recent contact with her family in Pakistan. Insufficient information was provided regarding whether Applicant still has emotional ties to her family, or if they agreed to see her again, if she would agree. Based on the information in the record, I cannot conclude that there is no conflict of interest. I find AG ¶¶ 8(a) and 8(b) do not apply.

There is property in Pakistan that Applicant explained was given to her by her husband and she received as part of their divorce. However, she stated she gave the house to her sister in Pakistan, but her ex-husband evicted her sister and gave the house to his family. It is unclear if Applicant is legally entitled to the property, or what its current status is, and who has possession of the property. Insufficient evidence was provided to determine the value of the property, its legal owner, and whether it could create a conflict of interest. I find AG ¶ 8(f) does not apply.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 15 delinquent debts totaling approximately \$80,150. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant currently has 15 delinquent debts. There is documentation that stated she was enrolled in a debt relief program since June 2010, but the payment plan is for only 11 debts. She provided documentation that supports she made four payments in 2011. No proof of additional payments was provided. She did not provide information about the status of the debts not included in the payment plan. I find AG ¶ 20(a) does not apply because all of Applicant's delinquent debts are not addressed and not resolved. I find AG ¶ 20(b) partially applies because Applicant went through a divorce and that affected her finances. Applicant acknowledged the 15 debts. She stated she

was unaware of them, but also admitted she moved and there is no information as to what action she took to ensure she received notices from the creditors. I find Applicant did not act responsibly under the circumstances. There is no information regarding Applicant's current financial status and ability to repay all of her creditors. I find AG ¶¶ 20(c) and 20(d) do not apply.

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. Applicant has numerous relatives who are citizens and residents of Pakistan. She indicated that they do not speak to her because she is divorced. There is insufficient information to conclude whether given the opportunity, Applicant would renew her relationship with her family. There is no information regarding Applicant's children's relationship with their relatives in Pakistan. Insufficient information was provided regarding Applicant's legal rights to property she was given in Pakistan. Applicant has 15 delinquent debts totaling approximately \$80,150. While it appears she has resolved some delinquent debts not alleged in the SOR and has a payment plan for many of her debts, there is insufficient evidence about her financial stability and payment history. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Guideline B, Foreign Influence, and Guideline F, Financial Considerations.

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-1.c:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.o:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge