



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



In the matter of:)	
)	
)	ISCR Case No. 10-02673
)	
)	
Applicant for Security Clearance)	

Appearances

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

05/30/2012

Decision

WHITE, David M., Administrative Judge:

Applicant was born and raised in Pakistan. He obtained permanent U.S. residence through an immigration amnesty program in the late-eighties and became a citizen in 2005. He has no assets or close family members in this country. His mother and sister, who teaches at a Pakistani military college, live in Pakistan. He failed to mitigate resulting security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on November 25, 2009. On January 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on February 7, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 2, 2011, and the case was assigned to me on March 10, 2011. The case was reassigned among different judges in August and November 2011 while unsuccessfully attempting to accommodate Applicant's travel schedule to and from his overseas work assignments, or to conduct his hearing via video teleconference.

The case was reassigned to me on December 1, 2011. DOHA issued a Notice of Hearing on December 19, 2011, and I convened the hearing, as rescheduled due to inclement weather, on January 20, 2012. The Government offered exhibits (GE) 1 through 3, which were admitted without objection. The Government also offered hearing exhibit (HE) I, and administrative notice documents (AN) I through VIII, in support of the HE I request that I take administrative notice of the facts contained therein concerning Pakistan. Applicant had no objection to the requested administrative notice. Applicant offered exhibit (AE) A, which was admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 30, 2012.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor, where he has worked for more than two years. He has never held a security clearance. He has no military service, and earned a bachelor's degree in pre-engineering/physics at a college in Pakistan during the mid-eighties. He has never married and has no children.¹ In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, and 1.b, and denied those in SOR ¶¶ 1.c through 1.f.² Applicant's admissions, including his responses to DOHA interrogatories,³ are incorporated in the following findings.

Applicant was born and raised in Pakistan. His father, who passed away in 1993 or 1994, was a superintendent of the Pakistani national police. Applicant's last visit to Pakistan was for his father's funeral. His mother did not work outside their home during his childhood, but recently taught religious studies to students who stayed in her home. Applicant paid a smuggler to help him illegally immigrate to the United States after he completed college during the mid-1980s. He worked in agriculture jobs and drove a taxi. In 1989, he was granted permanent U.S. residence under the temporary amnesty laws that were passed. He became a naturalized U.S. citizen on January 24, 2005.⁴

Applicant says that he has no savings or assets in either Pakistan or the United States. He purchased a home in 2006, but it has steadily lost value and is now worth less than he owes in mortgage debt. He is current on those payments. He also owns a

¹GE 1; Tr. 11, 35-37.

²AR.

³GE 2.

⁴GE 1; GE 2; GE 3; Tr. 34-38.

town car and limousine service company, but other people are managing it for him while he is working overseas and he said it has no net value.⁵

Applicant's mother is 64 years old and a citizen of Pakistan. She obtained U.S. permanent resident status in 2007, but did not like living here and moved back to Pakistan in 2008 where she resided continuously until returning to the United States with Applicant in late December 2011. He had almost daily telephone contact with her during that time. Applicant hoped that she would remain at his home with a longtime friend who also lives there, but said that she would probably return to Pakistan since he was returning overseas to work and she would be lonely. His mother still owns their family home in Pakistan. He is unsure how long she will stay there if she goes back.⁶

Applicant's sister and brother-in-law are also citizens and residents of Pakistan. She is his only sibling, and works as a teacher at an elite Pakistani military college. Her husband is a real estate agent. Except when he is working overseas and communications are more difficult, Applicant said that he talked to his sister four to eight times per month by telephone. He talked to his brother-in-law when he would call and neither his mother nor sister was available, but rarely called for the sole purpose of talking to him.⁷ Concerning his mother and sister, Applicant testified:

The family, the family ties, I will keep taking care of my mother, my sister. Nobody will stop me. That's my duty. They are all - - she is old and she needs my help. So this is the time when the sons come to play. She is with me as long as she stay here. She will stay here forever if she wants to stay here. She is weak in the eyes and she's weak on the - - healthwise but it's with the doctors - - whatever the doctor recommend, she will do it.⁸

Applicant's duties involve working overseas in support of U.S. military forces as a translator. He originally worked for a U.S. Marine Corps colonel in command of a combat unit, to facilitate communications with the local population and leaders. In September 2010 he was severely injured by an Improvised Exploding Device (IED) that detonated near him. He was evacuated to Germany and then to a hospital in the United States for spinal surgery. As soon as he was released from the hospital, he attempted to return to his unit but was ordered to return to the U.S. for three months of convalescence. He then resumed working overseas, but was assigned to non-combat-related duties assisting the chief contracting officer at an Army facility to ensure that contract funds are properly spent on the projects for which they are intended.⁹

⁵GE 1; GE 2; GE 3; Tr. 36, 60-65

⁶GE 2; Tr. 44-49, 53-54, 59-60.

⁷GE 1; GE 2; GE 3; Tr. 50-52.

⁸Tr. 70.

⁹AE A; Tr. 39-44, 54, 70-72.

Applicant's two aunts and uncle who are resident citizens of Pakistan, as alleged in SOR ¶ 1.c, are his mother's sisters and brother. The uncle is a doctor, who helps look after his mother when she is in Pakistan. He communicates a couple times a year with these relatives, usually in connection with holiday well wishes.¹⁰

Applicant also has a cousin who is more of a friend than a close relative. Their contact has recently been infrequent. This man owns a smoke shop business in the United States, but maintains his residence in Pakistan and travels back and forth. Applicant is unsure of his citizenship status.¹¹

The friend alleged in SOR ¶ 1.f is a U.S. citizen who was born and raised in Pakistan. At the time of the hearing, he was residing in Applicant's home in the United States, and planned to remain there as long as Applicant's mother remained and needed assistance.¹²

Other than as noted above, Applicant provided no evidence concerning the quality of his professional performance, or the degree of independent responsibility involved in his present work. The deployed Army contracting officer for whom he worked starting in January 2011 provided a letter describing his IED injury and subsequent return to work after undergoing surgery.¹³ Applicant provided no other evidence from any acquaintances, coworkers, supervisors, or family members concerning his character, or his reputation for trustworthiness, responsibility, or integrity.

I took administrative notice of the facts set forth in HE I concerning the Islamic Republic of Pakistan, which are incorporated herein by reference. Of particular significance are the poor human rights situation; the active and hostile presence of Al Qaida, Taliban, and other extremist groups; and concerns over weapons and nuclear technology transfers and cooperation with countries including North Korea, Iran, Libya, and China.

Policies

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

¹⁰GE 3; Tr. 54-56.

¹¹GE 3; Tr. 57-58.

¹²GE 3; Tr. 47, 59-60.

¹³AE A.

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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

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. Department Counsel argued that substantial evidence in this case established two, and possibly three, of them:

(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.¹⁴

Pakistan has significant internal anti-western terrorism threats, and a history of security-related technology proliferation and transfers, contrary to U.S. interests. Accordingly, connections there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections in many other countries.

Applicant shared living quarters with his mother during her relatively brief visits to the United States starting in 2007 and 2011. During her prior and interim periods living in Pakistan, he had close and frequent contact with her by telephone. He also has regular and ongoing contact with his sister, who teaches at an elite Pakistani military college. He honestly expressed his natural and commendable feelings of a deep duty to look out for his mother's and sister's welfare. He has less frequent contacts and more distant relationships with his brother-in-law, aunts, and uncles who are also resident citizens of Pakistan. However, through his close and loving relationship with his mother, he has an entirely legitimate, serious interest in the welfare of her sisters and brother, as well as his sister's family.

These facts meet the Government's burden of production by raising all three of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and

¹⁴Tr. 21-22, 67.

connections with Pakistan through his relatives there shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (d) security concerns 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.

Considered in light of the substantial anti-western terrorism threat and history of security-related technology transfer problems in Pakistan, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his family ties there. Even though he has not personally visited Pakistan since his father's funeral, he has close relationships with his mother and sister, both of whom have ongoing relationships with other close relatives who are resident citizens there. His sister's position as a teacher in an elite Pakistani military college is also significant. His communication and contact with his Pakistani family members since he came to the U.S. were neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a) and (c).

The evidence also fails to establish significant mitigation under AG ¶ 8(b). Applicant was adamant that he had no assets in the United States. Both the home and business that he owns apparently involve more debt than equity. His only close family member here was his mother, who returned to live in Pakistan shortly after being granted permanent U.S. residence in 2007 because she did not like living here. She had recently returned here with Applicant, but was unlikely to remain once he returned overseas shortly after his hearing. Applicant was seriously injured while serving as a contract interpreter/translator for a U.S. Marine Corps combat unit, but did not establish that he sought or accepted that lucrative employment for reasons that would sufficiently demonstrate deep or longstanding U.S. relationships or loyalties under Appeal Board precedent.

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 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.

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 pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature, educated, and experienced individual, who has acted responsibly and provided valuable service to U.S. military forces deployed in combat. However, the inherent potential for pressure, coercion, exploitation, or duress from the presence and, in this case, government connections of Applicant's immediate Pakistani family members, remains unmitigated. Placing Applicant in a position wherein it is foreseeable that he could be forced to choose between the security interests of the United States and the interests of his mother or sister is the harm to be avoided. He failed to show that such potential has diminished.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from foreign influence considerations.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For 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.

DAVID M. WHITE
Administrative Judge