



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



In the matter of:)
)
) ISCR Case: 10-03425
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

March 14, 2011

Decision

DAM, Shari, Administrative Judge:

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

History of Case

On September 10, 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). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 1, 2010, and requested a hearing before an administrative judge. DOHA assigned the case to me on December 13, 2010, and issued a Notice of Hearing on December 22, 2010, scheduling the hearing for January 13, 2011. On that day Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence, which were admitted without objection. Applicant testified and called two witnesses. He offered Applicant Exhibits (AE) A through FF into evidence, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 24, 2011.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Pakistan. The request and documents pertaining to Pakistan are identified as Hearing Exhibit (HE) 1 and include attachments I through VIII. The parties stipulated to the introduction of said documents with the limitation that only facts pertinent to Pakistan be considered. (Tr. 14) Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer, Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a through 1.f. Those admissions are incorporated herein.

Applicant is 43 years old. He was born in Pakistan and attended high school there. In March 1989, he immigrated to the United States on a student visa to obtain higher education and achieve a better life. (Tr. 79.) In November 1995, he graduated from a U.S. university with a bachelor's degree in electrical engineering. In 2002, he became a U.S. permanent alien resident. In September 2008, he became a U.S. naturalized citizen and obtained a U.S. passport, which he has used for all subsequent travel. (Tr. 75.) From 1995 to March 2009, he worked for a telecommunications company. (AE T.) In March 2009, he began his current position as a project engineer with a defense contractor. His security officer destroyed his Pakistani passport in April 2010. (AE M; Tr. 33.)

Applicant is married to a woman who was born in, and is a citizen of, Pakistan. They were married in November 2008 in Pakistan, where she was residing. She earned a master's degree in business from a Pakistani university. In September 2009, she entered the United States on a visa. She became a U.S. permanent alien resident in May 2010 and intends to become a citizen as soon as she qualifies. (Tr. 41; GE 2.) They have a five-month old child, born in the United States. She does not know that he applied for a security clearance. (Tr. 72.)

Applicant was previously married to a woman who was also born in Pakistan. They married in November 1997 in Pakistan and divorced in March 2000 in the United States. (GE 2.)

Applicant's parents were born in Pakistan. They immigrated to the United States in November 2003. They are retired. His father worked for a private bank in Pakistan for 35 years. His mother was a homemaker and a school principal. They became U.S. citizens in September 2009 and reside in the United States. (GE 2.) They moved to the United States because they love this country. (Tr. 73.) He thinks they may be dual citizens because they may have passports from both countries. (Tr. 55.)

Applicant has two brothers, who are citizens and residents of the United States. One brother became a U.S. citizen in July 2007; the other became a citizen in February 2010. Applicant has three sisters. Two sisters reside in the United States. One sister became a U.S. naturalized citizen in 2000; another sister has U.S. permanent resident alien status. He thinks these siblings may be dual citizens because they may have passports from both countries. (Tr. 55.) His third sister is a citizen and resident of Pakistan. She is married to a citizen and resident of Pakistan, who is a commander in the Pakistani Navy. (GE 2.) Applicant's brother-in-law has visited the U.S. on several occasions for work-related purposes, but has not visited Applicant; his sister has never visited the United States. (GE 2; Tr. 60.) Prior to applying for a security clearance, Applicant spoke to his sister and brother-in-law about eight times a year. (Tr. 61-62; GE 2.) He now has minimal contact with them. (Tr. 62.) None of his family members are aware that he has applied for a security clearance. (Tr. 63.)

Applicant's father-in-law is deceased. His mother-in-law is a citizen and resident of Pakistan. His two sisters-in-law are citizens and residents of Pakistan. None of them are connected to the government or military. One of his sisters-in-law is married to a man, who works for the Pakistani Air Force. Applicant does not know if he is in the military or is a civilian. (Tr. 67-68.) Prior to applying for a security clearance, he had contact with his wife's family about once a month. (GE 2.) He has since substantially decreased his contact with them. (Tr. 43.) His wife has also decreased the frequency of her communications with them. She no longer contacts them once a month, but once every two or three months. (Tr. 62, 69.) Applicant does not discuss his work with these relatives. (Tr. 52.)

Applicant traveled to Pakistan in 2006, 2008, and twice in 2009. He went in 2006 to attend his brother's wedding. His brother married a Pakistani woman, who now resides with him in the United States. (Tr. 63.) He stayed at his sister's house. (Tr. 63.) In 2008, he returned to marry his second wife. In 2009, he and his wife went for a honeymoon there. They did not stay with relatives. (Tr. 64.) In late 2009, he returned with his wife to attend his sister-in-law's wedding. They stayed at his mother-in-law's home for a week and at a hotel for a week. (Tr. 65.)

Applicant owns a home in the United States worth \$435,000 with a \$370,000 mortgage. He has retirement and bank accounts in the United States. (Tr. 77.) There is

no derogatory information in the record concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs or been involved in an alcohol-related incident. (GE 1, 2.)

Applicant credibly expressed his allegiance and loyalty to the United States. “I love this country. I’ve lived most of my life in this country. My home is here, my family is here. I own property here. So this is my country. I consider this my country, and I love this country.” (Tr. 79.) He has reduced his contacts with relatives in Pakistan. (Tr. 52.)

Applicant submitted 12 letters of recommendation from colleagues and supervisors who currently work with him or who previously worked with him. All of the letters commend Applicant on his capabilities and work ethic. (AE A to L.) His project manager has found Applicant “to be open and honest in all of our interactions and [he is] not aware of a single instance of dishonesty. It is obvious that [Applicant] is focused on the good of the company, the customer, and the US soldier that will eventually use our product.” (AE D.) Applicant submitted his Performance Evaluations for 2009, 2008, 2007, 2006, and 2005. The evaluations rate him as either meeting expectations or exceeding expectations in various categories. (AE N to S.) In September 2010, he received an award from his employer for exceptional performance in a design project. (AE V.)

Applicant called two witnesses. Applicant’s facility’s security officer (FSO) has known Applicant for two years and has daily contact with him. Applicant told him of his travel to Pakistan in 2009. (Tr. 34.) The FSO has no reservations about supporting Applicant’s request for a security clearance. (Tr. 31.) Applicant’s senior manager testified. He hired Applicant. (Tr. 35.) He trusts Applicant and considers him to be a reliable and honest employee. He supports his request for a security clearance. (AE K.)

Pakistan

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

Policies

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

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

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

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline B, Foreign Influence

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

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

AG ¶ 7 describes three conditions that could raise a security concern and may be disqualifying:

- (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;¹
- (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.

Applicant's sister, brother-in-law, mother-in-law, and two sisters-in-law are citizens and residents of Pakistan. His brother-in-law is a commander in the Pakistani navy. Applicant communicated with these relatives approximately once a month before he began applying for a security clearance. He traveled to Pakistan in 2006, 2008, and

¹The mere possession of close family ties with a family member living in Pakistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

2009 and visited his relatives while there. While there is no evidence that intelligence operatives from Pakistan or terrorists seek or have sought classified or economic information from Applicant or his spouse, or his relatives living in Pakistan, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities, and Pakistan has a problem with terrorism. Department Counsel produced sufficient evidence of Applicant's family members, and his spouse's contacts with her family members living in Pakistan, to raise the issue of potential foreign pressure or attempted exploitation. That evidence warrants the application of AG ¶¶ 7(a) and 7(b).

The evidence also raised AG ¶ 7(d) because Applicant's spouse, who resides with him, is a citizen of Pakistan. She also frequently communicated with her family living in Pakistan prior to his application for a security clearance. He and his wife traveled to Pakistan twice in 2009 and visited their families living there

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

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

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, engages in human rights abuses, 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 presence of terrorists in Pakistan and its human rights problems places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationship with two family members

and his spouse's relationships with three family members living in Pakistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist one of his family members or his spouse's family members living in Pakistan, who might be coerced by the Pakistani government or terrorists operating in Pakistan.

The current positions of Applicant's sister, mother-in-law, and two sisters-in-law in Pakistan do not involve the government or military and they would have no personal interest in acquiring protected information. Only their physical presence creates the potential that their interests could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. Hence, AG ¶ 8(a) has some application to those family members. Said mitigating condition has limited application to Applicant's brother-in-law because he is a commander in the Pakistani navy and could possibly have an interest in Applicant's access to classified or sensitive information, if known. However, Applicant does not discuss work with his brother-in-law or any other family member living in Pakistan. None of the family knows that he has applied for a security clearance. Those facts, along with Applicant's decrease in communication with them, tend to negate concerns that those relationships pose a security risk.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has strong family connections to the United States. He has lived here since 1989. His spouse has U.S. permanent resident alien status. His young child was born in the United States. His parents, two brothers, and one sister are citizens and residents of the United States. Another sister has U.S. permanent resident alien status. He graduated from a U.S. university. He has worked for U.S. employers since 1995. He owns property in the United States. He credibly asserted his love and connections to the United States. AG ¶ 8(b) fully applies.

Applicant visited Pakistan in 2006, 2008, and twice in 2009. Prior to recently applying for a security clearance, Applicant had frequent contact with his sister and brother-in-law, and his in-laws in Pakistan. His spouse had frequent contact with her mother and two sisters. See *generally* ISCR Case No. 09-03114 at 2 (App. Bd. Oct. 22, 2010) (holding communications once a month were sufficient to be frequent). Because of his connections to his sister, brother-in-law, spouse, and her connections to relatives in Pakistan, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Pakistani citizens] could create a risk for foreign influence or exploitation." Hence, AG ¶ 8(c) has limited applicability.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Three circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and human rights abuses in Pakistan. More importantly for security purposes, terrorists are hostile to the United States and actively operate in Pakistan. Terrorists or the Pakistani government could attempt to use Applicant's family members to obtain such information. Second, he had numerous connections to Pakistan before he immigrated to the United States in 1989. Following his birth, he spent his formative years in the country, including attending high school there. Five family members are citizens and residents of Pakistan, and his spouse remains a citizen of the country.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 22 years, and has been a naturalized citizen since September 2008. He has worked in the United States since 1995, after completing his bachelor's degree at a U.S. university. His parents and three siblings are citizens and residents of the United States. Another sibling is a resident with U.S. permanent alien status. His spouse will apply for citizenship as soon as she qualifies. His ties to the United States, which he refers to as his country, are much stronger than his ties to one sibling, a brother-in-law, and three in-laws living in Pakistan, with whom he has reduced contacts. There is no evidence he has ever taken any action that could cause potential harm to the United States. His supervisors and colleagues credibly assess him as trustworthy and responsible. There is no derogatory information about him in the record. He credibly asserted his allegiance to the United States. Applicant's position, assets, and established connections in the United States make coercion through any of his relatives living in Pakistan extremely unlikely. In the event such a conflict arose, I am persuaded that Applicant would resolve the conflict of interest in favor of the United States.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has fully mitigated the security concerns pertaining to foreign influence.² Overall, the record evidence leaves no doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B.

Formal Findings

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.f: For Applicant

Conclusion

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

SHARI DAM
Administrative Judge

²I conclude that the whole-person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole-person analysis standing alone is sufficient to support approval of a security clearance in this case.