



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



In the matter of:)
)
) ISCR Case No. 10-03426
)
Applicant for Security Clearance)

Appearances

For Government:
Marc C. Laverdiere, Esquire, Department Counsel
For Applicant: James S. DeISordo, Esquire

April 29, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 26 August 2010, the Defense Office of Hearings and Appeals (DOHA) sent a Statement of Reasons (SOR) to Applicant raising security concerns under Guidelines B (Foreign Influence) and F (Financial Considerations).² Applicant timely answered, requesting a hearing. DOHA assigned the case to me 21 October 2010, and I convened a hearing 1 December 2010. DOHA received the transcript (Tr.) 7 December 2010.

¹Consisting of the transcript (Tr.) and Government exhibits (GE) 1-6.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations under foreign influence but denied the financial allegations. He is a 57-year-old senior engineer employed by a defense contractor since July 2003. He seeks to retain the clearance he has held since 1998.

Applicant was born in Pakistan in January 1953. He grew up there and attended college there. He immigrated to the U.S. and became a naturalized U.S. citizen in October 1996. He got his first clearance in August 1998. He got his most recent U.S. passport in March 2008 (GE 1).

Applicant's brother, sister, and two life-long friends are resident citizens of Pakistan. The rest of his siblings are U.S. citizens living in the U.S. His brother drives a bus. His sister is a stay-at-home mom. Her husband works in the private sector, as do his two friends. None of them have any connection to the Pakistani government. He talks to his friends by telephone once or twice a year. His contacts with his siblings are only slightly more frequent, aside from his visits to Pakistan. Applicant traveled to Pakistan on vacation in 2003, 2004, 2005, 2008, and 2009. He stays with his sister when he is in Pakistan. He follows company security rules for foreign travel, giving the company advance notice of his itinerary and getting a security briefing before travel. He has not had any problems with foreign officials when traveling.

Applicant has no financial or property interests in Pakistan. All his property and financial interests are located in the U.S. He does not stand to inherit any property in Pakistan. Applicant does not intend to return to Pakistan.

Pakistani law does not permit dual citizenship or nationality except with the U.K. and Commonwealth nations. Under the Pakistan Citizenship Law of 1951, both Applicant and his wife ceased to be Pakistani citizens when they acquired U.S. citizenship. Applicant's two children—one born in Pakistan; one born in Algeria—have become U.S. citizens.

Pakistan is an Islamic parliamentary democracy with a poor human rights record, including extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread government corruption, and the disappearance and imprisonment of political opponents. Nevertheless, Pakistan has had diplomatic relations with the U.S. since 1947 and has actively cooperated with the U.S. in the global war on terrorism. However, terrorist groups operate in Pakistan, making safety and security an issue. Extremist groups in Pakistan target American and other Western interests, senior Pakistani officials, and members of minority indigenous and religious groups. Pakistan is not on the National Counterintelligence Center's list of most active nations engaging in foreign economic collection and industrial espionage. It is not known to be an active collector of U.S. intelligence information, nor is it known to target its expatriate former citizens to obtain U.S. information.

The SOR alleges, and government exhibits confirm, two delinquent debts totaling nearly \$198,000. The debts are for the deficiency balance on a short-saled investment property (SOR 1.a) and the foreclosed second mortgage on another investment property (SOR 1.b). Applicant bought the properties in 2006 to take advantage of the real-estate boom then in progress. It does not appear that he had any particular expertise to make these sensible investments. The record is unclear whether he intended to rent the properties and was unsuccessful or had renters but was unable to keep them. However, he intended to resell one of the properties (SOR 1.b) after six months (GE 1). The other property was in default within six or seven months of its purchase (GE 2).

Applicant claims, without corroboration, to have paid on both mortgages for a time, until he exhausted his personal savings. He claims (GE 1) that the creditor at debt 1.a cancelled the debt after the short sale of the property. However, documentation from the creditor in June 2009 (GE 2) confirms only that the creditor agreed to the short sale, but specified that the remaining balance was still owed and collectible. Applicant stated (Tr. 40-41) that neither lender is currently demanding payment, but provided no proof that either lender had forgiven the debt or intended to forgive the debt. Applicant is otherwise current on his finances.

Applicant's work reference (Tr. 77) considers Applicant reliable and trustworthy, and he has no problems handling classified information.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline B (Foreign Influence) and Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment,

reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline B, but Applicant mitigated the security concerns. Under Guideline B (Foreign Influence), an applicant’s foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁴ Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target expatriates who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁵

Applicant has been a U.S. citizen for 14 years, and has held a clearance without incident for most of that time. The residency and citizenship of his siblings and friends have already been adjudicated. While that fact is no bar to revisiting the issue of foreign influence, it nevertheless gives a framework for evaluating the issue now. None of Applicant’s foreign contacts have any connection to the Pakistani government, and while Pakistan is not the most stable of regimes in the region, is not known to pursue U.S. government information or to target its former citizens for that information. What remains to be assessed is Applicant’s several trips to Pakistan over the last seven years. That travel increases Applicant’s exposure to the Pakistani government, but given that the Pakistan government does not seek U.S. information or target its former citizens, I conclude the risks are minimal. I resolve Guideline B for Applicant.

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Setting aside for a moment the wisdom of Applicant’s real-estate investments, the speed with which the properties fell into default suggest that Applicant was not really prepared for his venture. He has not

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 6.

⁵¶ 7 (a).

documented any efforts to keep the properties current, and while he has documented one short sale, he has not documented that he has been relieved of his financial liability on the debts.⁶ Nor has he addressed his potential income tax liability if the nearly \$200,000 is forgiven.

This case falls outside the normal outline for financial cases, so the mitigating factors for financial considerations provide less guidance than usual. However, his financial difficulties are both recent and multiple, although largely through events unlikely to recur.⁷ Again setting aside the wisdom of his investment plan, the decline in the housing market was largely beyond his control, but he has not shown that he acted responsibly in addressing his debts.⁸ He has not documented his claimed efforts to deal with the mortgages without resorting to short sales. And while short sales are a legal means of resolving mortgage debt, they do not automatically signify responsible dealing with debt. He has received no credit or financial counseling, although on the facts of this case such counseling seems unnecessary. Nevertheless, without proof that the creditors have foregone their right to collect Applicant's debts, I cannot conclude that his financial problems are under control⁹ or that he has made a good-faith effort to satisfy his debts.¹⁰ I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-c:	For Applicant
Paragraph 2. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant

⁶¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁷¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁸¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁹¶ 20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

¹⁰¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Conclusion

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

JOHN GRATTAN METZ, JR
Administrative Judge