



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



In the matter of: )  
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----- ) ISCR Case No. 10-07436  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: Joseph Testan, Esquire

July 27, 2011

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on September 13, 2007. (Government Exhibit 1.) On October 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 on September 1, 2006.

Applicant answered the SOR in writing on November 14, 2010, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on December 28, 2010. This case was assigned to another administrative judge on January 4, 2011. It was reassigned to me on January 18, 2011. DOHA issued a notice of hearing on January 4, 2011. I convened the hearing as scheduled on January 20, 2011. The Government offered Government Exhibits 1 and 2, which were

received without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A through K, which were also received without objection. DOHA received the transcript of the hearing on February 4, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Russian Federation (Russia) and the Islamic Republic of Pakistan (Pakistan). (Transcript at 18.) The request and the attached documents were not admitted into evidence, but are included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is 64, married, and has a post-graduate degree. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. In his Answer to the SOR, Applicant admitted all of the factual allegations. He also provided additional information to support his request for eligibility for a security clearance.

### **Guideline B - Foreign Influence**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of Applicant.

Applicant is a naturalized American citizen from Pakistan. His immediate family all live in the United States. This includes his Russian born wife, as well as his two children by a previous marriage to an American citizen. Applicant and his wife were married April 14, 2006. His wife emigrated to the United States on October 4, 2006. (Government Exhibit 1.)

Applicant's wife loves living in the United States, wants to be a citizen, and has submitted her application for American citizenship in December 2010. (Tr at 55, 89, 103-104; Applicant's Exhibit K.) Applicant's wife has a daughter who continues to reside in Russia with his wife's parents. It is the desire of the daughter to emigrate to the United States when possible. He does not have a close relationship with his wife's daughter because of the language barrier. (Tr at 56, 86-91.)

Applicant travelled to Russia between 2003 and 2005. He was employed in the defense industry at that time, and he fully complied with security requirements while making these trips. These trips were to allow him to meet in person various Russian women he had developed a relationship with over the internet. (Government Exhibit 2; Tr at 82-83.) One of these women became his wife. None of these women asked Applicant about his employment in the defense sector. Applicant has no desire or intention to travel to Russia in the future. (Government Exhibit 2; Tr at 58-60.)

Applicant's mother-in-law and father-in-law are residents and citizens of Russia. His wife talks to her mother by telephone on an occasional basis. (Tr at 56.) Neither of these relatives are members of the Communist Party or were connected to the Soviet or Russian defense establishment. (Tr at 57.)

Applicant has contacts with Russia. Accordingly, it is appropriate to discuss the situation in Russia at this time.<sup>1</sup> I take administrative notice of the following facts. Russia is a federation made up of 21 republics. Its government has a poor human rights record and it is plagued with corruption, media suppression, politically motivated crimes, and human rights violations. Russia has a significant intelligence capability that it retained from the Soviet Union. Russia's intelligence efforts continue to increase in sophistication, scope, and number. It has an aggressive industrial espionage and intelligence collection program targeting sensitive and protected U.S. technology. Russia's government sells to other countries technology with application for weapons of mass destruction (nuclear and biotechnology) and missiles. It has provided such technology and support to China, Venezuela, India, and Iran against U.S. wishes. In 2008 Russia invaded its neighbor, Georgia, in connection with a long-simmering border dispute. Russia also has a continuing rebellion in Chechnya.

As stated earlier, Applicant is a naturalized American citizen who was born in Pakistan in 1947. Applicant emigrated to the United States in 1968. He has lived permanently in the United States since 1973. He became an American citizen on February 22, 1978. (Government Exhibit 1.) Applicant has been employed in the defense industry since 1973, and has held a security clearance almost continually since 1978, without incident. (Tr at 53-54.)

The SOR alleged that Applicant's mother, brother and sister live in Pakistan. Applicant's brother passed away in April 2010. (Answer; Tr at 71-72.) His mother passed away in December 2010. (Applicant Exhibit J; Tr at 68, 72.) Applicant has five remaining siblings, all sisters. Four of them live in the United States and are American citizens. (Government Exhibit 1; Tr at 61-64.) His remaining sister continues to live in Pakistan. Applicant has not talked to this sister for years, due to a dispute with this sister over how his mother was taken care of by her. He feels no sense of duty or responsibility towards this sister. (Tr at 64-66.)

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<sup>1</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice.

Applicant travelled to Pakistan six times between 2000 and 2006. The primary purposes of these trips were to get divorced from a prior Pakistani wife and to visit his mother. He has not been to Pakistan since 2006 and has no desire or intention to travel there in the future. (Tr at 81.)

Applicant has contacts with Pakistan. Accordingly, it is appropriate to discuss the situation in Pakistan at this time.<sup>2</sup> Pakistan is a parliamentary federal republic in South Asia. After September 11, 2001, Pakistan pledged its alliance with the U.S. in the Global War on Terror and made a commitment to eliminate terrorist camps on its territory. Despite these efforts, members of the Taliban are known to be operating inside Pakistani territory. Parts of Pakistan are viewed by the U.S. State Department as being terrorist safe havens. In addition, American citizens have been warned of the risks of traveling to Pakistan. The human rights situation in Pakistan remains poor. Major problems include extrajudicial killings, torture, and disappearances.

### **Mitigation**

Applicant has substantial assets in the United States. He has a diversified portfolio that includes considerable real property, mutual funds, as well as an IRA and retirement accounts. He estimates his net worth at over one million dollars. (Applicant Exhibits G through H; Tr at 73-74, 91-98.)

The Applicant submitted letters and other documents in support of his request for a security clearance. They show that the Applicant is a highly respected expert in his field, and that he has provided valuable services to the defense efforts of the United States. People who have worked with him in the past, and currently, believe him to be an honest man and recommend him for a security clearance. (Applicant's Exhibits A and B.)

Applicant testified about his feelings concerning the United States. "This is my country. I love it, and I will just die for it. I could not do any harm to the security of the United States just because I have a Secret Clearance." (Tr at 67.) His daughter also testified about her father's love for the United States, as well as his trustworthiness. (Tr at 31-46.)

### **Policies**

Security clearance decisions are not made in a vacuum. 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

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<sup>2</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice.

mitigating conditions, which are to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has contacts with Russia and Pakistan (Guideline B).

### **Guideline B - Foreign Influence**

The concern under Guideline B is styled as follows:

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.

The Applicant's entire immediate family lives in the United States. It is obvious that the Applicant spent a great deal of time, trouble, and money to find and move his current wife here from Russia. His wife, however, still has connections to Russia. As described above, his wife's mother, father, and daughter still live in Russia. She contacts her parents and daughter on an occasional basis. That relationship cannot be seen as being casual.

The evidence is also clear, however, that the Applicant's wife has acculturated to the American way of life very quickly. Applicant's wife has submitted her application to become an American citizen. Since her application for citizenship has been accepted, it is logical to assume that she was investigated by the American embassy in Russia, as well as by United States Citizenship and Immigration Services, before being allowed to emigrate to the United States.

As for his Pakistani family, Applicant only has a sister from whom he is estranged living there. His mother and brother have both died in 2010, thereby obviating any need to travel to Pakistan in the future. The remainder of his family, including his two children

and his remaining sisters, all live in the United States. As stated, he has considerable financial holdings in the United States.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case:

7.(a) Contact with a foreign family member . . . 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 . . . 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 . . . 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.

I have also considered the information concerning the Russian and Pakistani governments, which was provided by Department Counsel in his Administrative Notice documents.

On the other hand, the Applicant has provided compelling evidence to show that the following Mitigating Condition also apply to this particular case, given his background:

8(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.

The evidence shows that the Applicant has been a successful member of the defense industry for almost 40 years. He has been a loyal and upstanding American citizen for over 30 years. Since 1973 he has put his abilities to work for several defense contractors. He is respected by his family, friends, and colleagues. His connections to the United States are deep and long-standing. The Applicant's travels to Russia and Pakistan have no current security significance. I have also considered his wife's communications with her family in Russia. Under the facts of this case, including the whole-person concept, as further described below, those contacts do not have current security significance.

### **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. This particular Applicant has been extremely forthcoming with the Government. He has shown himself to be trustworthy and a person who shows good judgment. His current foreign connections are not of a type to cause security issues. Applicant has shown that he is knowledgeable about security rules and is able to follow them. Based on his actions and testimony, as well as the statements of others, I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his foreign connections. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

### **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 THE APPLICANT

Subparagraphs 1.a through 1.e.: For the Applicant



## **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge