



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



In the matter of:)	
)	
)	ISCR Case No. 10-10713
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

October 24, 2011

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen, was born in Pakistan. He mitigated the alleged financial concerns by resolving the delinquent debts alleged in the SOR. However, he failed to mitigate the foreign influence concerns raised by his close familial relationships with individuals who are residents and citizens of Pakistan. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on April 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

(SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual bases for the action under Guideline B (foreign influence) and Guideline F (financial considerations).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on June 3, 2011. The hearing proceeded as scheduled on July 13, 2011. At hearing, Government's Exhibits (GE) 1 through 7 were admitted without objection. I admitted as Hearing Exhibit (HE) 2 a demonstrative exhibit prepared by Department Counsel. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were also admitted without objection. I received the Transcript (Tr.) on July 21, 2011.

At the end of the hearing, I left the record open for the Applicant to submit additional documentation. He timely submitted five documents, identified as AE I through L, which were admitted without objection from Department Counsel.

Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan. Without objection from Applicant, I approved the request. The request and the attached documents have been included in the record as HE 1. Applicant also submitted documents about Pakistan, which are included in the record, without objection from Department Counsel, as HE A. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 41-year-old naturalized citizen of the United States originally from Pakistan. Applicant immigrated to the United States in 1997 and became a citizen in 2003. He does not hold dual citizenship with any other country. Initially, he worked at a casino and then at a convenience store while taking English classes. In 2003, he was hired as a linguist for government contractor. In 2010, he worked as a translator supporting the United States military abroad.²

Married since 2004, Applicant's wife is also a citizen of Pakistan. She has been living in the United States as a permanent resident alien since 2007. She submitted an application for U.S. citizenship in June 2011. The couple has a three-year-old daughter who was born in the United States. Applicant's parents, four brothers, sister, and their families, as well as his wife's father and seven siblings are citizens and residents of Pakistan. None of Applicant's or his wife's relatives work for the government. Nor is there any indication that any of Applicant's or his wife's relatives receive benefits from the government. Applicant provides \$200 to \$300 in financial support for his parents each month, giving more if unexpected expenses arise. He does not provide financial

² Tr. 19, 22 – 23; GE 3.

support for any other family members. He speaks to his parents and siblings at least once per month by telephone, but he has not seen them since 2007. Applicant's wife maintains frequent contact with her family in Pakistan. She talks to her father and siblings at least once every three months. Applicant speaks to his in-laws infrequently during these conversations. Applicant's wife returned to Pakistan in 2010 to care for her dying mother. She returned to the U.S. shortly after her mother's funeral.³

Applicant's financial problems began when he first arrived in the U.S. Without fully understanding how credit cards worked in the United States, he used them to help make ends meet. Eventually, he accumulated six delinquent debts totaling approximately \$23,379. After he began working as a translator in 2010, he hired an attorney to help him address his delinquent debt. As a result, Applicant has resolved the six debts alleged in the SOR and he has not accumulated any additional debt. He does not have any financial interests in Pakistan. Although he does not own any property in the United States, he has \$56,000 in cash savings.⁴

Applicant is highly esteemed by his coworkers. His evaluations indicate that he exceeds performance expectations. He has received awards and accommodations from the military and his employer for his work. His team leader considers him a "tremendously valuable member of [the] organization [who will be] very difficult to replace upon redeployment." According to his team leader Applicant was "consistently included in analysis and mission planning due to his subject matter expertise and his ability to balance the needs of local nationals with the needs of the military members he supports." Because of his skill, Applicant was selected to go on two long-term missions, which were considered dangerous. According to Applicant's testimony, his team was attacked three times though he was not injured.⁵

Pakistan

Pakistan is a parliamentary federal republic in Southwest Asia. It is a low-income country, with a population that is 97 percent Muslim. Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001. However, Pakistan reassessed its relations with the Taliban and pledged support to the United States and the international coalition in Operation Enduring Freedom, which aimed at removing the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leaders of the Taliban operate openly in Pakistan. Extremists led by the Pakistani Taliban (Tehrik-i-Taliban "TTP") commander and other Al-Qaida extremists have re-exerted their hold over areas in the FATA and the North West Frontier Province (NWFP). Taliban financing, which crosses the border of Pakistan to Afghanistan, has allowed the insurgency in Afghanistan to strengthen its military and technical capabilities.

³ Tr. 23 – 43.

⁴ Tr. 21, 52 – 55, AE A – L.

⁵ AE G – H.

The security situation in Afghanistan worsened in 2008, including an increase in Al-Qaida's presence to levels unseen since 2001-2002, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. Although Al-Qaida's core organization in the tribal areas of Pakistan was under greater pressure in 2009 than in 2008, it remained the most dangerous component of the larger Al-Qaida network. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to Al-Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremist groups, Al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies.

The Pakistani government has a poor human rights record. Reported human rights violations include extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, widespread corruption, disappearance and imprisonment of political opponents, and trafficking in women and children. As of February 2009, the government maintained domestic intelligence services that monitored political activists, suspected terrorists, the media, and suspected foreign intelligence agents. The Department of State warns U.S. citizens of the risks of travel to Pakistan in light of threats of terrorist activity. Since 2007, American citizens have been kidnapped for ransom or other reasons. Credible reports indicated that authorities routinely intercepted and opened mail without requisite court approval, and monitored mobile phones and electronic messages.⁶

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 list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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

⁶ HE 1; HE 2.

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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 F, Financial Considerations

The security concern 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Both disqualifying conditions apply here. Applicant experienced financial problems when he first immigrated to the United States 14 years ago. His low income and his lack of understanding U.S. financial practices related to credit cards caused him to accumulate delinquent debt.

Two of the following mitigating conditions available under AG ¶ 20 are applicable to this case:

20(c) the person 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

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

Upon recognizing he needed help navigating the financial waters, Applicant hired a lawyer to contact his creditors and facilitate the payment of his delinquent debt. Working with his attorney, Applicant has resolved each of the delinquent debts alleged in the SOR. According to the most recent credit report available he has not accumulated any new consumer debt. He lives within his means and has been able to save a significant sum of money. Based on the evidence, I conclude that Applicant has mitigated the Guideline F concerns.

Guideline B, Foreign Influence

Under this guideline, “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.”⁷

AG ¶ 7 indicates three conditions that are disqualifying in this case:

(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

Applicant’s parents, his five siblings, his father-in-law, and his wife’s seven siblings are residents and citizens of Pakistan. Applicant’s wife is also a citizen of Pakistan, albeit a permanent resident alien of the United States.

⁷ AG ¶ 6.

The mere possession of close ties with family members living in Pakistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant 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.

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, 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 relationship of Pakistan with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Pakistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Pakistan who might be coerced by terrorists or other Governmental entities in Pakistan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁸ Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified or economic information from or through Applicant, or his relatives living in Pakistan, it is not possible to rule out such a possibility in the future. Although Applicant has not seen his family in over four years, he continues to feel an obligation to them and affection for them. Applicant's concern for his relatives is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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.

Family contacts and ties with persons in a foreign country are not automatically disqualifying, but require the applicant to present evidence in mitigation and extenuation that he qualifies for access to classified information. Given the large number of ongoing contacts with his immediate family in Pakistan, Applicant failed to meet his burden showing there is "little likelihood that he could create a risk of foreign influence or exploitation" under AG ¶ 8(a). The evidence supports a finding that Applicant feels an obligation to his relatives' welfare.

In determining the applicability of AG ¶ 8(b), Applicant's relationships in the United States must be weighed against the potential conflict of interest created by his relationships with his relatives who live in Pakistan. Applicant decided to make the United States his home. In the 14 years Applicant has lived in the U.S., he has returned to Pakistan twice. On each occasion, the main purpose of his visit involved his wife. In 2004, Applicant went to Pakistan to marry. In 2007, he returned to escort her to the United States when she received green card. He has not seen his parents or siblings since 2007. Applicant and his wife have made a home in the U.S. and their daughter is a U.S. citizen by birth. Furthermore, the nature of his job also demonstrates his commitment to the U.S. As a translator in a war zone, Applicant has placed himself in danger to support the mission of the U.S. in the region. On three occasions he has been in combat situations.

Conversely, Applicant has at least 15 relatives to whom he is bound by ties of obligation and affection who are residents and citizens of Pakistan. There is no evidence that terrorist, criminals, the Pakistan government, or those conducting espionage have approached or threatened Applicant or his relatives in Pakistan to coerce Applicant or his relatives for classified information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' recent relationship with Pakistan, and especially Pakistan's systematic human rights violations and most of the ever present danger from terrorists and those who seek to damage U.S. interests. The conduct of terrorists in Pakistan makes it more likely that terrorists would attempt to coerce Applicant through his relatives living in Pakistan, if the terrorists determined it as advantageous to do so. When weighed together, the risk posed by Applicant's relatives in Pakistan is greater than his ties to the United States. As such AG ¶ 8(b) does not apply here.

While Applicant's contacts and communications with his parents and siblings cannot be considered casual or infrequent under AG ¶ 8(c), this description describes his communication with his in-laws. There is no evidence in the record to suggest that he has close ties to them. Applicant met his in-laws once in 2004 at his wedding and since then he has spoken to them on the phone occasionally during one of his wife's calls to her family. However, Applicant's wife's close ties to her family cannot be ignored and prevent the full application of the mitigating condition to this case.

In sum, the primary security concern is Applicant's relationships with his relatives, who live in Pakistan. These relatives are readily available for coercion. Although the Pakistan Government's failure to follow the rule of law further increases the risk of coercion, the major cause of concern is the prevalence of terrorists in Pakistan.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. In his efforts to support the United States in its missions abroad, Applicant has placed his own safety in jeopardy. The level of commitment he shows to his work as a translator is indicative of his loyalty to the United States. However, the circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant's relatives live in Pakistan. Terrorists have killed hundreds of Pakistani citizens in the last two years, and would not hesitate to coerce Applicant through his relatives to obtain classified information. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with 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 Guideline B, foreign influence.

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.g:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a - 2.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.

Nichole L. Noel
Administrative Judge