



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



In the matter of: )  
 )  
 [Redacted] ) ADP Case No. 11-03459  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: William F. Savarino, Esq.

February 3, 2012

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline B (Foreign Influence). Eligibility for a public trust position information is granted.

**Statement of the Case**

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on March 24, 2010. On October 20, 2011, the Defense Office of Hearings and Appeals (DOHA) recommended denial his application. DOHA set forth the basis for its recommendation in a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOHA acted 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on November 1, 2011; answered it on November 15, 2011; and requested a hearing before an administrative judge. DOHA received the request on November 17, 2011. Department Counsel was ready to proceed on

December 13, 2011, and the case was assigned to me on December 21, 2011. DOHA issued a notice of hearing on January 5, 2012, scheduling it for January 19, 2012.<sup>1</sup> I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open to enable Applicant to submit additional documentary evidence. He timely submitted AX G, which was admitted without objection. Department Counsel's comments regarding AX G are attached to the record as Hearing Exhibit (HX) I. DOHA received the transcript (Tr.) on January 26, 2012.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Pakistan. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as HX II. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶ 1.a in part. He denied SOR ¶ 1.b and admitted SOR ¶¶ 1.c and 1.d. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 31-year-old systems engineer employed by a federal contractor. He has worked for his current employer since January 2010. He has never held a public trust position.

Applicant was born in Pakistan, in a small town near the border with India. He came to the United States with his mother in January 1994. His father was already living in the United States and operating a restaurant. Applicant completed the eighth grade, high school, and college in the United States. He obtained an associate's degree in information systems in May 2004 and a bachelor's degree in information systems in May 2004. He is currently working toward a master's degree in information assurance. (Tr. 39-42.) He became a citizen of the United States in January 2009. He allowed his Pakistani passport to expire and shredded it. Since becoming a U.S. citizen, he has used only his U.S. passport for foreign travel. (GX 2 at 3.)

Applicant traveled to Pakistan for about two weeks in 2007 to visit his aunt (his mother's sister) and two cousins, who live in a small village in the eastern part of Pakistan. (Tr. 44-45.) He visited his aunt again in 2009, and was introduced to his future wife. He returned in early 2010 and was married, but his wife remained in Pakistan, waiting for her visa to immigrate to the United States. (Tr. 47-50.)

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<sup>1</sup> The hearing date was suggested by Applicant's attorney on December 29, 2011. Applicant did not object to proceeding less than 15 days after the date of the formal hearing notice.

Applicant's wife came to the United States in April 2011, lives with Applicant, and intends to become a U.S. citizen. (Tr. 51-52.) She is a medical doctor and is preparing to take a medical licensing examination so that she can practice in the United States. (Tr. 62.)

Applicant's father-in-law, mother-in-law, two sisters-in-law, and two brothers-in-law are citizens and residents of Pakistan. His father-in-law is retired from a medical-related profession, and his mother-in-law has never worked outside the home. Applicant's wife has contact with her parents about once a month. Applicant does not initiate any contacts with his wife's family. (Tr. 63-65, 72-73.)

One of Applicant's brothers-in-law works for a cell phone company and the other works for a private company that provides services for educational institutions. One sister-in-law is a housewife married to the owner of a construction company and the other is an unmarried college student. (Tr. 68-72.) None of his in-laws are connected with the government.

Applicant recognizes the security issues raised by his family members with foreign connections, and he does not talk about his work with his wife, her family members, or his parents. He does not bring his business laptop home and does not use his personal computer for work. (Tr. 66-68, 82.)

Applicant's parents are U.S. citizens. (Tr. 58.) He asserted that his mother renounced her Pakistani citizenship, but there is no documentary evidence of a renunciation. (Answer to SOR.) Applicant's parents live in his house. (Tr. 53.) Applicant estimates that the house is worth between \$550,000 and \$600,000. (AX A.)

In addition to his house, Applicant has about \$21,000 in a 401k retirement account, an IRA account worth about \$6,000, and \$30,000 in savings and investments. He has no financial interests outside the United States. (AX A; Tr. 75.)

Applicant's immediate supervisor, a technical manager for their employer, met Applicant when they were coworkers for another employer. His supervisor recruited him to work for their current employer in early 2010. His supervisor testified that he "does great work." His supervisor considers him a team player, very dedicated, dependable, and ethical. (Tr. 24-33.)

A senior vice-president of Applicant's company has known Applicant since January 2010. She regards him as a person with strong ethics and high integrity. (AX B.) A former coworker, two current coworkers, and a former classmate expressed the same favorable opinion of Applicant's character and ethics. (AX C-F.) Applicant's facility security officer has no doubts about his commitment to protect sensitive information or his loyalty to the United States. (AX G.)

I have taken administrative notice that Pakistan is a parliamentary federal republic with whom the U.S. has had diplomatic relations since 1947. Until 1990, the United States provided substantial military aid to Pakistan, but it was suspended as part

of the sanctions imposed in response to Pakistan's nuclear weapons program. After September 11, 2001, the sanctions were suspended in recognition of Pakistan's support for the U.S. campaign against terrorism, but its record in dealing with terrorists and militants has been mixed. It has persistently pursued militants it considers dangerous to Pakistan's interests, but it maintains its historical support of the Taliban and it considers militant groups to be important in its efforts to counter India's military and economic advantages. Many Al Qaeda and Taliban fugitives use the loosely-controlled border regions between Afghanistan and Pakistan as a safe haven. Travel to Pakistan is dangerous for U.S. citizens, because extremist groups in Pakistan target American and other Western interests, senior Pakistani officials, and members of minority indigenous and religious groups. Pakistan has a poor human rights record and suffers from widespread government corruption. There is no evidence that Pakistan targets the United States for economic, scientific, or military intelligence.

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is "clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 [sensitive] information will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See

ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## Analysis

### Guideline B, Foreign Influence

The SOR alleges that Applicant's wife is a citizen and resident of Pakistan (SOR ¶ 1.a); his mother is a dual citizen of Pakistan and the United States and resides in the United States (SOR ¶ 1.b); and his father-in-law, mother-in-law, sisters-in-law, and brothers-in-law are citizens and residents of Pakistan. (SOR ¶¶ 1.c and 1.d). The security concern under this guideline is set out in AG ¶ 6 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.

Guideline B is not limited to countries hostile to the United States. “[E]ven friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). We know that friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. 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 operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has partially refuted SOR ¶ 1.a with evidence that his wife resides with him in the United States. He denied the allegation in SOR ¶ 1.b that his mother is a dual citizen, and he asserted that she renounced her Pakistani citizenship. The Government produced no evidence of Pakistan's laws regarding dual citizenship and did not include information about dual citizenship in its request for administrative notice.

Three disqualifying conditions under this guideline are relevant:

AG ¶ 7(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;

AG ¶ 7(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

AG ¶ 7(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.

AG ¶¶ 7(a) and 7(d) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). The evidence shows that Applicant's contacts with his in-laws are minimal. However, "there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). While Applicant expressed no affection for his in-laws, he has not rebutted the presumption that he has ties of obligation to them.

There is no evidence that Pakistan targets the United States for military, scientific, or economic intelligence. However, the presence of hostile terrorist and insurgent organizations in Pakistan and Applicant's wife's close ties with her family members in Pakistan create the "heightened risk" contemplated by AG ¶¶ 7(a) and (d) and the "potential conflict of interest" contemplated by AG ¶ 7(b). Thus, I conclude that AG ¶¶ 7(a), 7(b), and 7(d) are established.

Trustworthiness concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). Applicant's wife resides with him in the United States, making it unlikely that she would be forced by terrorists or insurgents to make the hard choice between foreign interests and the interests of the United States. However, the presence

of hostile terrorist and insurgent groups in Pakistan and his wife's close relationships with her family members in Pakistan preclude application of this mitigating condition.

Trustworthiness concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b). Applicant and his family have lived in the United States for 18 years. He completed his grade school, high school, and college tuition in the United States. He owns a home and has substantial financial assets in the United States, and he has no financial assets outside the United States. He has earned the trust of his supervisors and coworkers. He has carefully compartmentalized his work life to avoid risking inadvertent disclosures of sensitive information. I conclude that AG ¶ 8(b) is established.

Trustworthiness concerns under this guideline also may be mitigated by showing that "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." AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has no immediate family members in Pakistan, and he has virtually no contact with his wife's immediate family. I conclude that AG ¶ 8(c) is not established for his relationship with his wife, but it is established for his contact with his in-laws.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline(s), but some warrant additional comment.

Applicant has lived his entire adult life in the United States. All his immediate family members are citizens and residents of the United States. He has a reputation for reliability and integrity. He conscientiously protects information related to his employment. He was candid, sincere, and credible at the hearing. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the trustworthiness concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

**Formal Findings**

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

**Conclusion**

I conclude that it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

LeRoy F. Foreman  
Administrative Judge