



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



In the matter of:)
)
) ISCR Case No. 11-04742
)
)
Applicant for Security Clearance)

Appearances

For Government, Eric Borgstrom, Esquire, Department Counsel
For Applicant: Phillip D. Cave, Esquire

04/04/2012

Decision

MASON, Paul J., Administrative Judge:

Applicant has not mitigated the foreign influence concerns raised by his 26-year-old daughter who, even though she is a U.S. citizen, spends part of the year in Pakistan with her husband, a resident citizen of Pakistan. Foreign influence concerns are also raised by Applicant’s 29-year-old daughter who is also a citizen of Pakistan living in the United Kingdom, and Applicant’s oldest sister who is a resident citizen of Pakistan. His ties and relationships in the United States are insufficient for me to find that he will decide all future conflicts of interest in favor of the United States. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified his Electronic Questionnaires for Investigations Processing (e-QIP) on April 15, 2010. (GE 1) On May 18 and May 20, 2010, he was interviewed by an investigator from the Office of Personnel Management (OPM). The interview summaries appear in Applicant’s interrogatory responses signed and notarized by him on June 2, 2011. (GE 3) In response to question #3 of the interrogatory

responses, Applicant indicated “no” that he did not agree with the interview summaries. After providing an attachment to GE 3 containing his modifications and changes to the original interview summaries, he indicated “no” in response to question #6, that he did not agree with the interview summaries, and he did not want the modified summaries to be used at a hearing to determine his security suitability. Applicant’s negative responses will be addressed below in Rulings on Procedure. On August 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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).

Applicant submitted his answer to the SOR on September 2, 2011. DOHA issued a notice of hearing on January 17, 2012, and the hearing was held as scheduled on February 6, 2012. At the hearing, the Government submitted five exhibits (GE 1 through GE 5) which were admitted into evidence without objection. Applicant testified at the hearing. His 17 exhibits (AE A through AE Q) were admitted into evidence without objection. DOHA received the transcript on February 13, 2012. The record in this case closed on March 19, 2012.

Rulings on Procedure

On January 31, 2012, Department Counsel provided Applicant’s counsel a copy of its motion for the administrative judge to take administrative notice of facts about the Islamic Republic of Pakistan. The motion was presented to the administrative judge at the hearing on February 6, 2012. Documents were submitted with the motion for foundation purposes. On February 3, 2012, Applicant filed a motion objecting to the supporting documentation because of its size. In his motion, he asked that the documentary source of each administrative fact (in Department Counsel’s administrative notice memorandum) be identified. At the hearing, the parties were allowed to present additional arguments regarding their respective positions. I overruled Applicant’s objection. According to the foreign influence guideline, the Government has a right to develop a full record by providing details about a foreign country where the foreign contact(s) or interest(s) are located, including information about whether the country is known to target U.S. citizens for classified information or is involved with terrorism. (Tr. 6-9)

On February 14, 2012, Applicant filed a motion requesting the Government to clarify his security clearance status. On February 22, 2012, Department Counsel indicated Applicant was granted an interim top secret security clearance by the Defense Industrial Security Clearance Office (DISCO) on April 10, 2010. See, Hearing Exhibits (HE 1 through HE 6)

On March 12, 2012, Applicant filed a motion to have two naturalization certificates of his 24-year-old son (AE R) and wife (AE S) entered into the record. On March 19, 2012, Department Counsel indicated he had no objection to the exhibits. On March 19, 2012, I closed the record. (HE 7 through 8) AE R and AE S are now a part of the record.

As noted in Statement of Case, Applicant answered “no” to questions #3 and #6 of GE 3. I interpret those responses to mean that Applicant did not want the interview summary to be used even after he supplied modifications to the original interview summaries. At the hearing, Applicant’s attorney indicated he had no objection to the admission of GE 3 into evidence. (Tr. 12) The exhibit is now in evidence and shall be used for all purposes.

Findings of Fact

The SOR has six allegations under foreign influence (Guideline B). In Applicant’s admission of SOR ¶ 1.a, he indicated his wife was a citizen of Pakistan. However, she possessed a permanent resident alien card and was completing the final requirements to become a naturalized U.S. citizen. He denied SOR ¶ 1.b, indicating that his 13-year-old-son and 20-year-old daughter were U.S. citizens. He admitted his 24-year-old son was applying to become a U.S. citizen and currently has a permanent resident green card during his deployment in Afghanistan as a linguist for a U.S. defense contractor. Applicant admitted his mother was a resident citizen of Pakistan. (SOR ¶ 1.c) Applicant denied his 26-year-old-daughter was a resident of Pakistan. (SOR ¶ 1.d) She has been living with Applicant at his home, and is processing for U.S. citizenship. She has three children born in the U.S. Applicant denied his 29-year-old-daughter was a resident of Pakistan although she is a citizen of the country. Rather, she is married to a British citizen and has permission to live in the United Kingdom indefinitely. Applicant admitted his oldest sister is a resident citizen of Pakistan. (SOR ¶ 1.e) Regarding the property identified in SOR ¶ 1.f, Applicant admitted he owned and used the property between March 2003 and August 2006. Additional findings of fact are set forth below.

Applicant was born in Pakistan. At age 22 (August 1975), after completing his bachelor’s degree in commerce at a Pakistani university, he immigrated to the United States. (Tr. 29; GE 5 at 2) His reason for immigrating was to seek additional education. He received a master’s degree in business administration in May 1979 from a U.S. university. Applicant married his wife in March 1981 in Pakistan, and they have five children.

In 1998, Applicant decided he wanted to live in the United States. (Tr. 30) He became a U.S. citizen on December 20, 2002 (AE E) and received a U.S. passport on December 27, 2002. (AE F, GE 1) He has been employed as a translator for a defense contractor since September 2009, and he received a pay increase in January 2011. (AE D) On two occasions, the defense contractor dispatched Applicant to a U.S. detention center to translate audio recordings. (Tr. 86)

Applicant's previous employment included working as a store manager at a check cashing business from September 2008 to April 2009; store manager for a trading company from March 2007 to March 2008; an independent contractor from November 2002 to March 2003; a sales associate for convenience stores from July 2002 to November 2002; and a marketing analyst for an industrial development bank in Pakistan from January 1985 to January 1998. (Tr. 74)

The foreign influence allegations will be addressed in the order they appear in the SOR.

SOR ¶ 1.a. Applicant's wife was born in Pakistan. She married Applicant in Pakistan in March 1981. She immigrated to the United States in November 2006 and has been living with Applicant since then. For the past two years, they have been living in an apartment they rent. (Tr. 34) According to Applicant, his wife returned to Pakistan twice in 2009, once when her oldest daughter (29 years old) was married in February, and a second time when his wife's father died. (Tr. 67)¹ Applicant's wife became a naturalized U.S. citizen on February 10, 2012. (Tr. 36; AE S) Applicant's wife is a housewife. (*Id.*)

SOR 1.b. Applicant's youngest son was born in Pakistan. He became a naturalized U.S. citizen in June 2007 (GE 1; Answer to SOR) He lives with Applicant. (GE 3, May 2010 interview) and attends public school. (Answer to SOR)

Applicant's 21-year-old daughter was born in Pakistan. She became a naturalized U.S. citizen in July 2007. (Answer to SOR; AE G) She is now studying pre-dentistry at a U.S. university.

Applicant's second son was born in Pakistan. He is 24 years old. He has his permanent resident card. He is employed as a linguist by a defense contractor and is currently deployed in Afghanistan. On March 5, 2012, he received his U.S. naturalization certificate. (AE R)

SOR ¶ 1.c. Applicant's mother, who was a resident citizen of Pakistan, died in January 2012. (AE A)

SOR ¶ 1.d. Applicant's 26-year-old daughter was born in Pakistan. Before she immigrated to the United States in November 2006, Applicant had weekly telephone contact with her in Pakistan. When she came to the United States, she began living with Applicant. (Answer to SOR) She became a U.S. citizen in December 2011. (AE I) She spent about nine months in the last year living with Applicant before returning to Pakistan in January 2012 to visit her husband (a resident citizen of Pakistan) and her three American-born children. (Tr. 59, 62) Her three children do not have dual

¹ Applicant testified his wife traveled to Pakistan for her oldest daughter's marriage in February 2010. Documentation reflects the oldest daughter was married in Pakistan in February 2009. (AE K)

citizenship. (Tr. 61) Her husband operates two Pakistani schools (kindergarten to the 10th grade) that teach the British educational model to students. (*Id.*)

Applicant's 29-year-old daughter was born in Pakistan. She married a naturalized British citizen in February 2009. In December 2009, she gave birth to a child in the United Kingdom and now has two children. (AE K; Tr. 77) In 2011, she received a residence permit allowing her to remain in the United Kingdom indefinitely. (*Id.*) Applicant maintains weekly contact with her. (GE 3, May 2010 interviews)

SOR ¶ 1.e. Applicant's oldest sister is 72 years old. She is a resident citizen of Pakistan. She was employed as a high school teacher and her husband was a professor of economics at a Pakistani university. They have been retired since their 60th birthdays. (Answer to SOR) (Tr. 52) The 72-year-old sister and her husband live on pensions. Applicant provides them with no supplemental funds. (Tr. 53, 76) They have one daughter living with them. (*Id.*) Applicant had monthly telephone contact with his sister until their mother became ill in 2011. (GE 3, May 2010 interview) During the mother's illness, Applicant called her several times to find out about the mother's status. (Tr. 52)

SOR ¶ 1.f. Applicant owned approximately one and one-half acres of land in Pakistan. He lived on and farmed the property from March 2003 to August 2006. (Tr. 73)² In his counterintelligence screening questionnaire dated November 16, 2006, he stated under the employment section of the questionnaire that the reason for leaving his employment as an independent contractor in March 2003 for Pakistan was to return his earnings to his wife. He farmed in Pakistan to support his family. (GE 5 at 1) In an attachment to the exhibit, he stated the purpose of his visit to Pakistan from 2003 to 2006 was to join family using his Pakistani passport. (*Id.*, attachment; Tr. 93)

In his counterintelligence screening questionnaire dated May 21, 2008, he claimed his primary reason for residing in Pakistan from March 2003 to August 2006 was to sponsor his family to come to the United States. (GE 4 at 3) He reiterated the sponsorship explanation at the hearing on February 6, 2012. (Tr. 70-71) When he realized the property could be a security clearance issue, he conveyed the parcel to his son-in-law in August 2011 through a quit claim deed. (Tr. 57; AE N)

Applicant has an older brother who was born in Pakistan in March 1935. He is 77 years old. The brother is a doctor and became a naturalized U.S. citizen in May 1980. (GE 2 at 27) Applicant's other sister is 61 years old. She was born in Pakistan and became a naturalized U.S. citizen in May 1993. (*Id.* at 29)

Applicant's wife has one brother and four sisters. (Tr. 64) Her brother, a resident citizen of Pakistan, is a farmer who, like all of Applicant's family members, has never

² In the employment section of April 2010 e-QIP, Applicant indicated he was unemployed from March 2003 to March 2007. (GE 1 at 23)

been employed by or affiliated with the Pakistani government. All of the sisters are citizens of Pakistan, but one of the sisters lives in Canada. (Tr. 65-66) Applicant has seldom to no contact with his wife's brother and sisters. (Tr. 66; GE 5, attachment)

Applicant knows security rules and regulations and would report any suspicious behavior, including attempts to pressure or coerce him, to his security officer or law enforcement. (Tr. 33; GE 3, May 2008 interviews, GE 4, GE 5)

Character Evidence

Seven linguists have known and worked with Applicant. Some have worked with him for at least two years. One has known him for five years. They consider him to be a quality linguist who is ready to dedicate the maximum effort to any task. His truthfulness and positive attitude are welcome attributes. (AE B) Applicant's friend since graduate school has gained much respect for him over the years. (*Id.*)

After seeing the serious injuries some of the American veterans have sustained, Applicant decided to donate small contributions to the Veterans of Foreign Wars (VFW) in the last two years to show his respect for American veterans. He received a certificate of appreciation from the organization. (Tr. 53-54; AE L) Applicant attends his youngest son's school band concerts. Applicant receives periodic notices explaining steps the school continually makes to keep the students safe. He also receives notices urging him to stay involved in his son's life. (Tr. 69-70)

According to GE 1 and GE 2, Applicant has no criminal record or financial problems.

Administrative Notice

Pakistan is a parliamentary Islamic republic with significant internal problems caused by terrorist organizations concentrated in several locations within the country. Following the attack on the United States on September 1, 2001, Pakistan promised to increase its commitment to bolster counterterrorism efforts through extensive campaigns against various terrorist organizations like Al-Qaida and other extremist groups. The increased battles cost the country hundreds of soldiers. There are still extensive terrorist networks within Pakistan that create ongoing security problems by targeting western interests and U.S. citizens, senior Pakistani officials, minority political groups, and religious entities. The human rights record of Pakistan is not good. Extrajudicial killings, torture, and disappearances have been reported, along with intrusive government surveillance of politicians, political activists, and the media. Government and police corruption is prevalent. Pakistan is not known to be an active collector of U.S. intelligence information.

Policies

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

These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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.

Analysis

Foreign Influence

AG ¶ 6 expresses the security concern of the foreign influence 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. 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains four conditions that may be applicable in this case:

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 individual's desire to help a foreign person, group, or country by providing that information;

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; and

AG ¶ 7(e) substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign influence or exploitation.

The mere possession of close ties and contacts with a family member in a foreign country is not disqualifying under Guideline B. On the other hand, if an applicant has close contact with a relative or friend living in a foreign country like Pakistan, this single factor may create a potential for foreign influence that is disqualifying under the guideline.

The political type of government in the foreign country, the government's relationship to the United States, and the government's record for protecting human rights, are relevant concerns in evaluating the chances an applicant's family members may be subject to government coercion. The risk of coercion is greater when the foreign government has an authoritarian government, the family member is affiliated or dependent on the government, or the government is known to engage in the collection of intelligence against the United States.

The foreign influence guideline is not limited to countries hostile to the United States, but applies to friendly nations whose disagreements with the United States may or may not motivate them to engage in espionage against the United States.

The evidence establishes that as of the date of the SOR (August 12, 2011), Applicant's family members raised foreign influence concerns under AG ¶¶ 7(a), 7(b), 7(d), and 7(e) because of their Pakistani citizenship and sharing living quarters with Applicant. Even though she is a naturalized U.S. citizen, Applicant's 26-year-old daughter creates security concerns because she spends part of the year with Applicant and part of the year in Pakistan with her husband, a resident and citizen of the country. Terrorists, criminals, or corrupt public officials, could create a heightened risk of foreign influence for Applicant through coercion of his 26-year-old daughter or her husband. The risk of foreign influence is less for his 29-year-old daughter because she has

documented permission to live indefinitely in the United Kingdom. The heightened risk of foreign influence is less for his 72-year-old sister because she is retired. However, she is currently drawing a pension. Finally, Applicant's residential and agricultural use of one and one-half acres of property also could potentially subject him to a heightened risk of foreign influence. In sum, the evidence presented under AG ¶¶ 7(a), 7(b), 7(d), and 7(e), shows that Applicant faces a heightened risk of foreign influence.

The burden then moves to Applicant to present sufficient evidence under AG ¶¶ 8(a), 8(b), and 8(c), that demonstrates he is unlikely to be placed in a position of having to choose between his family members and U.S. interests. The conditions are:

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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(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 minimal, or the individual has such deep and long-lasting 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

AG ¶ 8(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 foreign influence concerns relating to Applicant's wife, his two sons, and 21-year-old daughter, are reduced because they are U.S. citizens living with him. SOR ¶¶ 1.a and 1.b are found in Applicant's favor. His mother no longer represents a concern under the foreign influence guideline because she passed away in January 2012. SOR 1.c is resolved in Applicant's favor.

On the other hand, Applicant's 26-year-old daughter remains a source of foreign influence even though she is a naturalized U.S. citizen. She is married to a resident citizen of Pakistan who operates two schools. Although she lives with Applicant when she is in United States, she traveled back to Pakistan in January 2012. Applicant's 29-year-old daughter is a citizen of a Pakistan who has permission to live indefinitely in the United Kingdom. Applicant's oldest sister is still a resident citizen of Pakistan. Given Applicant's regular contacts with his daughters and oldest sister, coupled with Pakistan's poor human rights record and the ongoing terrorist activity, I am unable to apply AG ¶ 8(a) in his favor.

Applicant has repeatedly expressed his only loyalty is to the U.S. Government. He testified that he is fully cognizant of security rules and regulations and would report any suspicious behavior to the appropriate authorities. This testimony can have substantial value when an applicant has a track record of complying with security rules in dangerous circumstances that demonstrate he made a significant contribution to the national security. ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008) That track record is not present in this record. AG ¶ 8(b) is inapplicable because Applicant has failed to present sufficient evidence demonstrating his relationships and loyalties with the U.S. are so strong that he would resolve any conflict in favor of U.S. interests.

Regarding AG ¶ 8(c), there is a rebuttable presumption that an applicant's contacts with his immediate family members are not casual. Applicant's immediate family members referenced in SOR ¶¶ 1.a and 1.b are now U.S. citizens. Applicant's mother passed away. (SOR ¶ 1.c) However, I do not find his contact with both daughters in SOR ¶ 1.d and his sister in SOR ¶ 1.f, to be casual and infrequent. Conversely, his contacts with his wife's in-laws, though not alleged in the SOR, are casual and infrequent. He has had seldom to no contact with them. AG ¶ 8(c) applies to Applicant's in-laws.

Whole-Person Concept

In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the specific guidelines and nine factors under the whole-person concept. The whole-person analysis should address an applicant's family ties to the United States relative to his ties to a foreign country and his social ties within the United States, and any other relevant matters raised by the facts of a case. ISCR Case NO. 04-00540 at 7 (App. Bd. Jan. 5, 2007)

Applicant immigrated to the United States in 1975 and received a master's degree in business administration in May 1979. He is loyal to the United States. Applicant's wife was naturalized as a U.S. citizen in February 2012. Since June 2007, three of Applicant's five children have become naturalized U.S. citizens. The youngest son is in public school. The 21-year-old daughter is enrolled in a U.S. university. Applicant's 24-year-old son, who is employed as a linguist by a defense contractor and is deployed in Afghanistan, recently became a naturalized U.S. citizen in March 2012.

By quit claiming his one and a half acres to his son-in-law in August 2011, Applicant has severed his interest in the parcel even though it remains in the family.

By contrast however, Applicant's still faces a heightened risk of foreign exploitation from his 26-year-old daughter who, even though she is a naturalized U.S citizen, spends varying periods of time in the United States and Pakistan. Though she is not connected to the Pakistani government, terrorists or criminals could impose some type of coercion through her, her husband (a resident citizen of Pakistan), or her children, that creates a heightened risk of foreign inducement to Applicant. Although the possibility of coercion being applied to and through Applicant's 29-year-old daughter is less because she has residence permit allowing her to live indefinitely in the United Kingdom, the possibility still exists. Applicant's 72-year-old sister has been retired from her high school teaching job since her 60th birthday. However, she and her husband receive pensions from the government of Pakistan. Her pension could be used by a corrupt government official as a way to impose a heightened degree of pressure to and through her to Applicant.

Having evaluated the evidence under the disqualifying and mitigating conditions of Guideline B, and assessing the evidence in the context of the whole-person, Applicant has mitigated the foreign influence concerns alleged in SOR ¶¶ 1.a,1.b, and 1.c. He has not mitigated the foreign influence concerns of his two daughters in SOR ¶ 1.d. He has not mitigated the foreign influence concerns of his 72-year-old sister. (SOR ¶ 1.e) Even though he sold the one and one-half acres of foreign property in August 2011 (SOR ¶ 1.f), he derived some benefit from farming the land because he was able to produce food for his family for a period of three years ending in August 2006. He claims his primary purpose for returning to Pakistan in 2003 was to expedite the sponsorship process of his family. Applicant provided no independent evidence to support this claim. I do not find his claim credible. Given the foregoing foreign influence concerns, the lack of substantial relationships in the United States, and a significantly short professional employment history in the United States in contrast to his employment history in Pakistan since 1975, Applicant has not mitigated the foreign influence guideline.

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 (Foreign Influence, Guideline B):	AGAINST APPLICANT
Subparagraph 1.a-1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against 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.

Paul J. Mason
Administrative Judge