



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-04798
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: Richard L. Moorhouse, Esq., and William M. Jack, Esq.

03/09/2012

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on July 7, 2010. On October 6, 2011, the Defense Office of Hearings and Appeals (DOHA) notified her that it was unable to find that it is clearly consistent with the national interest to grant her access to classified information, and it recommended that her case be submitted to an administrative judge for a determination whether to deny her application for a security clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline B. 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); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on October 11, 2011; answered it on October 25, 2011; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 30, 2011, and the case was assigned to me on December 8, 2011. DOHA issued a notice of hearing on January 6, 2012, scheduling it for February 3, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on February 15, 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 Hearing Exhibit (HX) I. I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old business systems analyst employed by a federal contractor. Her employer is a small company with about 20 employees and focuses on information technology consulting. About 70 to 75 percent of its business is with the Government. Her husband is the majority owner of the company, her supervisor, and the facility security officer. He received a security clearance in 2008. (Tr. 73.)

Applicant was born in Pakistan. In July 1998, she married a native of Pakistan who was already a U.S. citizen. She came to the United States in July 1999 and became a U.S. citizen in December 2003. Her Pakistani passport expired in March 2004, and she did not renew it. She holds a U.S. passport and uses it for all foreign travel. (AX C; AX D; Tr. 46-47.) She and her husband have two children, ages 10 and 6, who are native-born U.S. citizens. (GX 2 at 6.)

Applicant's husband was born in Pakistan, immigrated to the United States as a child, and became a U.S. citizen in the 1993, when he was 18 years old. He obtained a bachelor's degree in electrical engineering from a U.S. university in 1996 and a master's degree in 2004 from the same university. His parents and siblings all live in the United States. His mother is a U.S. citizen and his father is a permanent U.S. resident. (Tr. 54, 73.)

Applicant attended a university in the United States from August 1999 to December 2002 and received a bachelor's degree in business. She worked for federal

contractors from February 2004 to May 2006 and from October 2009 to June 2010. She has worked for her current employer since June 2010. She has never held a security clearance, but she was cleared for a public trust position by another federal agency in October 2009. (GX 1 at 47-48.) Her husband prepared a training program for employees seeking a clearance, and she has completed it. (AX B; Tr. 30-31, 67-69.)

Applicant's mother and father are citizens and residents of Pakistan. Her mother is a college graduate but has never worked outside the home. (GX 2 at 6-7.) Her father was a fighter pilot in the Pakistani Air Force, retired in 1995 as a brigadier general, and then worked in private industry for about three years. He is now fully retired. While on active duty, he was the senior Pakistani military officer supporting the U.S.-led coalition in the Gulf War in 1991. (Tr. 34.) Her father was never connected with the Pakistani military intelligence services. (Tr. 35.) Her father came to the United States in August 2009, stayed for about seven months, and obtained a green card, because he was interested in buying retirement property in the United States. He abandoned his plan to live in the United States when his wife, who remained in Pakistan, became too ill to travel. (Tr. 37-38.) Applicant has telephone conversations with her parents several times a week. (GX 2 at 5; AX A at 1-2; Tr. 35.) Her husband has virtually no direct contact with Applicant's immediate family. (Tr. 75.)

Applicant's two sisters and her brother are citizens and residents of Pakistan. She has monthly contact with her older sister and quarterly contact with her younger sister. Her older sister's husband is an active-duty colonel in the Pakistani Air Force. Applicant's older sister lives with her husband and their three children in a gated community near a military base in Pakistan. (Tr. 39.) Her older sister's husband attended U.S.-sponsored training in the United States from July 2009 to July 2010, and Applicant had frequent contact with him during that year. (GX 2 at 7; Tr. 42.)

Applicant's younger sister is unmarried, unemployed, and lives with her parents. Applicant intends to sponsor both of her sisters for immigration to the United States. She has completed the documentation and consulted with an immigration lawyer. (Tr. 41.)

Applicant's brother has worked in banking positions and currently works for a provider of transactional network services in Pakistan. Her brother's wife is a medical doctor. Applicant has only occasional contact with her brother. (Tr. 41-43; AX A at 3.)

Applicant has four uncles who are retired from the Pakistani Army, two on her mother's side and two on her father's side. One was a lieutenant general and is deceased. Another is an 80-year-old retired lieutenant general. A third is a retired brigadier general, who now works in the private sector. A fourth retired as a major about 25 years ago and works in the pharmaceutical industry. Applicant also has several cousins who are currently serving in the Pakistani Army. She does not maintain contact with her uncles and cousins. (GX 2 at 8; AX A at 3; Tr. 44.)

Applicant traveled to Pakistan to visit her family in 2003, 2007, and 2008. One visit was about 90 days in duration and was for the purpose of visiting family and attending her brother's wedding. She always stayed with her parents while visiting Pakistan. (Tr. 50.) She has not travelled to Pakistan for three years and has no current plans to do so. (GX 2 at 9; AX A at 3.)

Applicant's parents know that she is applying for a security clearance, but her siblings do not know, because she does not discuss business with them. Her parents know that her husband is an engineer, but they do not know anything about his company or his work, because Applicant does not discuss work with them. (Tr. 51-52.)

Applicant does not own any property in Pakistan. She testified that any inheritance from her parents would be minimal under Islamic law, because women do not share equally with men. She also testified that she would pass any inheritance to her sister because "it's not worth the hassle for [her] to be living here and then running after a few dollars there." (Tr. 57.)

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**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An 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 Government reposes a high degree of trust and confidence in persons with access to classified information. 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B, Foreign Influence

The SOR alleges that Applicant's parents, two sisters, and brother are citizens and residents of Pakistan; that her father is a retired brigadier general in the Pakistani Air Force; and that she has contact with her parents several times a week (SOR ¶¶ 1.a, 1.b, 1.i, 1.f, and 1.h). It also alleges that her husband was born in Pakistan but immigrated to the United States and became a U.S. citizen (SOR ¶ 1.d). It alleges that her brother-in-law is a colonel in the Pakistani Air Force (SOR ¶ 1.g), that her four uncles are retired from the Pakistani Army (SOR ¶ 1.i), and that her cousins are currently serving in the Pakistani Army (SOR ¶ 1.j). Finally, it alleges that Applicant traveled to Pakistan on several occasions after 2003 to visit her family (SOR ¶ 1.k.)

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.

Three disqualifying conditions under this guideline are relevant to 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 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.

When security concerns based on family ties are involved, 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).

AG ¶¶ 7(a) and (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.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even 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). Finally, we know 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's travel to Pakistan was solely for the purpose of visiting her family. Her frequent contact with her parents, alleged in SOR ¶ 1.c, and her travel to Pakistan, alleged in SOR ¶ 1.k, are evidence of her close ties with her family, but they have no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005). Thus, I will resolve SOR ¶¶ 1.c and 1.k for Applicant.

Based on the evidence that all of Applicant's immediate family are citizens and residents of Pakistan and her father, brother-in-law, uncles, and cousins are serving or have served in the Pakistani military, I conclude that the evidence is sufficient to establish the "heightened risk" required for AG ¶¶ 7(a) and 7(d), and the potential conflict of interest in AG ¶ 7(b). Thus, I conclude that all three disqualifying conditions are established.

Security 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 is close to her parents and her sisters. The immediate family, brother-in-law, and extended family constitute a sizable Pakistani military fraternity. While Pakistan is not known to target the United States or U.S. interests for economic or military intelligence, the threat of terrorism is substantial. Applicant is not close to her uncles, but they are her parents’ immediate family, with the potential for influencing Applicant through her parents. The relationship between the United States and Pakistan is sometimes tenuous, with a significant potential for disagreement on issues such as suppressing Al Qaeda and the Taliban, Pakistan’s nuclear program, or Pakistan’s relationship with India. Based on all these considerations, I conclude that AG ¶ 8(a) is not established.

Security 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 is devoted to her parents and her sisters, and her family is deeply involved with the Pakistani military. On the other hand, she has lived in the United States for more than 12 years, was educated in the United States, and has been a U.S. citizen for eight years. Her husband has been a citizen for 18 years, and her children are native-born U.S. citizens. She previously worked for other federal contractors, and she was cleared for a public trust position by another federal agency in 2009. She does not discuss her work or her husband’s business with her family members.

Although Applicant comes from a culture where educated women like her mother do not work outside the home, she has pursued a professional career in the United States. She clearly does not feel any loyalty to Pakistan. Her tone of voice and body language spoke volumes when she testified about her minimal legal rights in Pakistan.

Applicant’s father and brother-in-law have served as fighter pilots, not intelligence officers or political policy makers. Her father fought alongside U.S. forces in 1991. He has been retired for more than 17 years, thus attenuating his Pakistani military and governmental connections. Her father demonstrated a strong interest in living in the United States until her mother’s illness forced him to return to Pakistan. While these circumstances do not eliminate the likelihood of direct or indirect pressure on Applicant through her family members, they reduce the likelihood of it occurring and the likely intensity of any pressure that might occur.

Based on all the above circumstances, I am satisfied that Applicant would resolve any conflict of interest in favor of the United States. Accordingly, I conclude that AG ¶ 8(b) is established.



Security 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). This mitigating condition is established for Applicant’s uncles and cousins, but not for her parents, siblings, or brother-in-law. However, the weight of this mitigating condition is diminished because of the possibility of Applicant’s uncles having influence on her parents.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance 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, but some warrant additional comment.

Applicant was candid, sincere, and credible at the hearing. She is well educated, intelligent, and articulate. She presented herself as a strong, confident woman. She has adapted to and thrived in a Western culture. While she is close to her family, she has carefully compartmentalized her life, and she does not discuss her work or her husband’s business with her family. She has demonstrated a strong attachment to the United States and aspires to have all her immediate family living in the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):                   FOR APPLICANT

Subparagraphs 1.a-1.k:   For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge