



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



In the matter of:)	
)	
)	ISCR Case No. 11-06837
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

10/11/2012

Decision

MASON, Paul J., Administrative Judge:

Applicant’s sexual behavior in October 2010 demonstrated extremely poor judgment by a security clearance holder. He was convicted of felony solicitation of a minor and sentenced to ten years imprisonment which was suspended. He will be discharged from probation in 2014. His limited evidence in mitigation is insufficient to resolve the sexual behavior guideline in his favor. The ties of affection that are imputed to Applicant through his spouse for his three in-laws, resident citizens of Pakistan, have not been mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP, Item 5) on January 7, 2011. He provided interrogatory responses (Item 8) to adjudicators from DOHA on August 9, 2011. In addition to the responses, Item 8 also contains Applicant’s interview with an investigator from the Office of Personnel Management (OPM) dated January 25, 2011. He adopted the investigator’s summary of the interview and indicated it could be admitted in evidence at a hearing to

determine his suitability to hold a security clearance. DOHA issued an undated Statement of Reasons (SOR, Item 1) detailing security concerns under sexual behavior (Guideline D) and foreign influence (Guideline B). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant filed his answer to the SOR on May 30, 2012. (Item 3) A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on July 7, 2012. He received the FORM on July 18, 2012. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. His response was due by August 17, 2012. No response was received by DOHA. The case was assigned to me on September 7, 2012.

Findings of Fact

The SOR contains one allegation that generates security concerns under the sexual behavior guideline, (SOR ¶ 1.a), and seven allegations that generate security concerns under the foreign influence guideline. (SOR ¶¶ 2.a through 2.g) Because the last two subparagraphs under SOR ¶ 2 are identified as SOR ¶ 2.f, the last subparagraph is changed to SOR ¶ 2.g. Applicant admitted all SOR allegations. His admissions are incorporated into the following findings of fact.

Applicant is 39 years old. He was born in Pakistan in 1973. He emigrated to the U.S. and was naturalized in September 1995. He entered the U.S. Navy in February 1993 and was honorably discharged in February 1997. He has been married since June 1998. He has two sons, ages 2 and 12, and two daughters, ages 8 and 13. From September 1997 to June 2003, he took several evening courses from a community college but received no degree. He owns his home that he has lived in since 2003. Applicant was granted a security clearance in January 2009. He has been employed in information technology jobs since October 2000. He has been a network administrator with a defense contractor since November 2010.

Sexual Behavior

In May 2010, after responding to an advertisement on the Internet, Applicant had several email, text message, and telephone call exchanges requesting sex for money from a female. The female was an undercover police officer, posing as a 16-year-old female. The communication stopped in late May 2010 with no action taking place. On October 14, 2010, Applicant contacted the undercover officer by email asking whether she was still interested in earning money for sex. She replied that she was because she wanted to purchase a cell phone. Applicant stated he would give her his cell phone for

sex. During an exchange of several emails, they agreed upon a location and time where they were to meet.

On October 21, 2010, the undercover officer received an email from Applicant that contained a cell phone number. She called the number and informed him she was at the agreed upon location. When he pulled into the location, he was arrested for felony sexual solicitation of a minor. In his statement to police officers, he admitted offering his cell phone in exchange for sex from a 16- year-old female.

On June 8, 2011, Applicant pled guilty to felony sexual solicitation of a minor, and was sentenced to 10 years imprisonment, but 9 years and 11 months were suspended. He was placed on three years supervised probation, ordered to register as a sexual offender, and required to submit to a mental health evaluation. (SOR ¶ 1.a)

When asked why he committed the crime, Applicant indicated boredom. He stated he made a terrible mistake that would not happen again. Applicant's wife and lawyer are aware of this offense. His employment manager is aware of the offense but does not know the details. When asked about the criminal offense by the OPM investigator in January 2011, he described the victim only as a "woman." Applicant did not believe he could be pressured or influenced. (GE 8, interview at 4)

Foreign Influence

Applicant married his wife in June 1998. She is a naturalized citizen of the U.S. Applicant's father was born in Pakistan but is a naturalized citizen of the U.S. (SOR ¶ 2.a, e-QIP at 23)

Applicant's mother is a citizen of Pakistan, living in the U.S. with Applicant's father, a U.S. citizen. (SOR ¶ 2.a) She is 56 years old. Her permanent resident card authorizes her to live and work in the U.S. She has no connections to a foreign government. She is a housewife. Applicant sees her face-to-face about once a week.

Applicant's brother is a citizen of Pakistan living in the U.S. with Applicant's mother and father. (SOR ¶ 2.b) He is 42 years old and employed as a photographer. He has permanent resident status. He has no affiliation with a foreign government. Applicant has face-to-face contact with him approximately once a week.

Applicant's father-in-law is a citizen of Pakistan, living in the U.S. (SOR ¶ 2.c) He has been living with Applicant since May 2010 and has daily contact with him. He is 62 years old with permanent resident status. He is retired with no foreign government affiliation.

Applicant's mother-in-law is a resident citizen of Pakistan. (SOR 2.d) She has no government affiliation. She visited Applicant and his wife in July 2009 and returned to Pakistan in February 2010 when her U.S. visa expired. Applicant's only contact with her occurs when he visits the country. Applicant's sister-in-law is a resident citizen of

Pakistan. (SOR ¶ 2.e) She has no foreign government affiliation. As with his mother-in-law, he sees her when he visits Pakistan. (SOR ¶ 2.e) Applicant's brother-in-law, a resident citizen of Pakistan with no foreign government affiliation, is a loan officer at a bank. (SOR ¶ 2.f)

Applicant's nanny is a citizen of Pakistan living with Applicant since May 2010. (SOR ¶ 2.g) The nanny is authorized to reside in this country under a U.S. visa. The nanny takes care of Applicant's four children along with her three-year-old child.

On August 9, 2011, Applicant responded to interrogatories regarding foreign influence. He responded "no" to whether any of his immediate family members were in a position to be exploited by a foreign power in a way that could force him to choose between the person(s) involved and the U.S. He responded "no" to whether any of his relatives had any connection or were employed by a foreign government. He answered "no" to whether he had any contact with foreign citizens that was not the result of official Government business. He answered "no" to whether his contact with foreign citizens was casual and infrequent. Applicant answered "no" to the fifth question whether he had ever been contacted, had threats made to him, or been threatened by persons or organizations from a foreign country.

Applicant presented no character statements that could have probative value regarding his judgment, reliability, and trustworthiness. Since he decided to have his case decided on basis of documents, I am unable to make credibility assessments.

Pakistan

I have taken administrative notice that Pakistan is a parliamentary federal republic and has had diplomatic relations with the U.S. since 1947. After September 11, 2001, the government declared its support for the international coalition to remove the Taliban from power. While the government's determination to combat militants seems genuine, its record in neutralizing the insurgencies within its borders has been problematic. Pakistan still has extensive terror networks. The Taliban and Al-Qa'ida (AQ) have a heavy presence in the Federal Administered Tribal Areas (FATA) that border Afghanistan, as well as in the Pakistani provinces that border Iran. These groups have instituted attacks against U.S. citizens, the Pakistani government, and its citizens. In May 2011, U.S. special forces launched a raid on an AQ compound in Pakistan killing the leader of AQ, Osama Bin Laden.

The human rights record of the Pakistani government remains poor. Elements within the government continue to commit offenses against its people including extrajudicial killings, kidnaping, and torture. Additional problems include widespread government corruption, honor crimes, and wiretaps of citizens without prior judicial approval.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

Analysis

Sexual Behavior

AG ¶ 12 defines the security concern:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about the individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes three conditions that may be potentially disqualifying:

AG ¶ 13(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

AG ¶ 13(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

AG ¶ 13(d) sexual behavior of a public nature and/or that reflects a lack of discretion or judgment.

Applicant's plea of guilty to sexual solicitation of a minor in June 2011 meets the three disqualifying conditions of the sexual behavior guideline. The behavior is criminal because Applicant was prosecuted under the criminal statutes of state X. Even if he had not been formally prosecuted, his conduct would have violated the state statute because his statements and conduct met all the elements of the solicitation offense. Though his wife and lawyer are aware of his sexual misconduct, he was not forthright with his manager or the OPM investigator in his description of the details of the offense. Applicant's behavior reflects a lack of judgment by a security clearance holder who is married and the father of four children. AG ¶¶ 13(a), 13(c), and 13(d) apply.

AG ¶ 14 describes two conditions that may be potentially mitigating:

AG ¶ 14(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment; and

AG ¶ 14(c) the behavior no longer serves as a basis for coercion, exploitation, or duress.

The sexual behavior was not minor. Applicant attempted to exploit whom he believed to be a minor female by offering her a cell phone in exchange for sexual action. The fact that the minor was really an undercover police officer is irrelevant. The offense occurred less than three years ago and Applicant pled guilty less than two years ago. He will not be discharged from probation until 2014. His recent sexual behavior continues to raise security concerns about his reliability, trustworthiness, and judgment. He has provided insufficient evidence persuading me that he is no longer a candidate for coercion or influence. AG ¶¶ 14(b) and (c) do not apply.

Foreign Influence

AG ¶ 6 sets forth 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; 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.

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 family member or friend living in a foreign country like Pakistan, that has terrorist and insurgent groups located within its borders, this single factor may create a potential for foreign influence that is disqualifying under the guideline.

The foreign government's relationship to the United States, and the foreign government's record for protecting human rights, are additional relevant concerns in evaluating the chances of an applicant becoming a target of coercion through his family members. The risk of coercion is greater when the foreign government has an authoritarian government, the government is unstable, 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. Even though Pakistan is a federal republic that has not been known to target the U.S. for military or economic intelligence, the government has a poor human rights record and government corruption is widespread.

The entirety of an applicant's family ties to a foreign country should be carefully evaluated. This critique includes an applicant's immediate family members. There is also a rebuttable presumption that an applicant has ties of affection to the immediate foreign family members of his spouse.

Except for his father who is a naturalized citizen of the U.S., Applicant's mother, brother, father-in-law, and nanny are citizens of Pakistan living in the U.S. Applicant's mother and brother live with Applicant's father. Applicant's father-in-law and nanny have been living with Applicant since May 2010. Applicant has regular contacts with them. His mother-in-law, sister-in-law, and brother-in-law are citizens of and reside in Pakistan. Applicant's contacts and familial relationships combined with the unsafe circumstances that exist in Pakistan create a heightened risk of foreign exploitation, inducement,

manipulation, pressure, or coercion triggering the application off AG ¶¶ 7(a), 7(b), and 7(d).

The Government has established a case under the disqualifying conditions in AG ¶¶ 7(a), 7(b) and 7(d). Applicant has the burden of establishing the foreign influence has been mitigated. Applicant must 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 the interest of his family member(s) and U.S. interests. The mitigating 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.

AG ¶ 8(a) applies to Applicant's mother and brother. Though Applicant's mother and brother are Pakistani citizens, they have never had foreign government connections. Applicant's mother has a permanent resident card and is a housewife, married and living with Applicant's father, a U.S. citizen. Applicant's brother, a photographer, also has a permanent residence card and lives with Applicant's mother and father. It is unlikely that terrorists or insurgents would exert pressure or coercion through the mother or brother, or both, to place Applicant in a position of having to choose between these foreign family member(s) and the interests of the U.S. I reach the same conclusion regarding Applicant's father-in-law and nanny because they have been living with Applicant since May 2010.

On the other hand, AG ¶ 8(a) does not apply to his mother-in-law, sister-in-law, and brother-in-law because they are citizens of and reside in Pakistan. Terrorists or government operatives could apply coercion or influence through his Pakistani in-laws to force Applicant to choose between these person(s) and U.S interests. Applicant's presumed ties of affection through his wife to his mother, sister, and brother-in-law rule out the application of AG ¶ 8(a).

Applicant received an honorable discharge from the U.S. Navy in 1997. He, his wife and four children are U.S. citizens. He purchased a home in 2003. However, Applicant presented no evidence of his job performance, community involvement, or reputation for trustworthiness and reliability. Without the foregoing evidence, I am unable to make an assessment about whether Applicant has sufficient longstanding relationships and loyalties in the U.S. to resolve conflicts of interest in favor of U.S. interests. AG ¶ 8(b) is not applicable.

Regarding AG ¶ 8(c), there is a rebuttable presumption that an applicant's contacts with his immediate family members are not casual. As discussed under AG ¶ 8(a), the U.S. residence of Applicant's mother, brother, nanny, and father-in-law, dramatically reduce the chances of those individuals becoming targets for coercion, even though Applicant's contact with them is more than casual and infrequent. The same conclusion cannot be reached for his mother-in-law, sister-in-law, and brother-in-law because they are resident citizens of Pakistan. The mitigating condition is not established for his wife's contacts with her family members who are resident citizens of Pakistan.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions under the sexual behavior and foreign influence guidelines. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 39 years old. He and his wife are naturalized U.S. citizens. His four children were born in the U.S. He served in the U.S. Navy for four years, receiving an honorable discharge in February 1997. According to the e-QIP, he has been employed in information technology positions since at least October 2000.

Weighing against Applicant's positive background evidence is his conviction in June 2011 for felony sexual solicitation of a minor. The sexual behavior occurred recently and he will not be discharged from probation until 2014. While Applicant's attorney and his wife know about the crime, his manager is not familiar with the details of the crime. Applicant was not entirely forthright with the OPM investigator when he described the victim of the offense. Applicant has not mitigated the security concerns established by his sexual behavior.

Based on a careful consideration of the disqualifying and mitigating conditions under the foreign influence guideline, evaluated in the context of the whole-person concept, Applicant has mitigated the security concerns raised by his mother, brother, father-in-law, and nanny, but he has not mitigated the security concerns related to the resident citizenship of his mother-in-law, sister-in-law, and brother-in-law. He has not met his burden of persuasion to warrant security clearance access.

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 D):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2 (Guideline B):	AGAINST APPLICANT
Subparagraph 2.a, 2.b, 2.c, 2.g:	For Applicant
Subparagraph 2.d, 2.e, 2.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge