



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-15125 |
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| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government, Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

02/11/2013

Decision

MASON, Paul J., Administrative Judge:

Applicant has seven siblings who are citizens and residents of Pakistan. The foreign influence security concerns raised by Applicant’s siblings are mitigated by his infrequent contact with them and his 21-year allegiance to the U.S. Eligibility for access to classified information is granted.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on May 31, 2011. (GE 1) On August 13, 2012, the Department of Defense (DOD) 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), effective in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on September 14, 2011. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 15, 2012 and the hearing was held as scheduled on December 20, 2012. At the hearing, the Government submitted one exhibit (GE 1) which was admitted into evidence without objection. Applicant and his supervisor testified at the hearing. His four exhibits (AE A through AE D) were admitted into evidence without objection. Applicant also provided a two page statement explaining the contents of his four exhibits. (HE 1) References to the transcript will be cited as (Tr.), followed by the page number. DOHA received the transcript on January 3, 2013. The record in this case closed on January 3, 2013.

Rulings on Procedure

Early in the hearing, Department Counsel requested that I take administrative notice of facts about the Islamic Republic of Pakistan. (Tr. 18-20) The request and ten attachments relating to Pakistan are identified as HE 2. Applicant testified that he had no facts and supporting documents that I should take administrative notice of concerning the Islamic Republic of Pakistan. (Tr. 20)

Findings of Fact

The SOR has three allegations under foreign influence (Guideline B). Applicant admitted he has three brothers who are citizens and residents of Pakistan. (SOR 1.a) Applicant admitted he has three sisters who are citizens and residents of Pakistan. (SOR 1.b) Applicant admitted that he had two stepsisters who were citizens and residents of Pakistan. (SOR 1.c) His oldest stepsister died on January 20, 2012. (Answer to SOR) His mother and father, who were citizens and residents of Pakistan are also deceased. (GE 1)

Applicant was born in Pakistan in 1961 and is 51 years old. In April 1984, he married his wife, a citizen and resident of Pakistan. After receiving his bachelor's degree in public education, he received his master's degree in political science in August 1986.

Applicant immigrated to the United States (U.S) in 1991 by applying for and receiving political asylum from a military dictatorship in Pakistan. (AE A) He became a naturalized U.S. citizen in July 1999. (GE 1; Tr. 72) His wife immigrated to the U.S. in approximately 1992 and received her naturalized U.S. citizenship in about 2000. (Tr. 72; GE 1)

Applicant has been employed in information technology with five U.S. employers since 1992. He has been a senior network engineer for a defense contractor since March 2011. He held a public trust position in 2009. He currently seeks his first security clearance. (GE 1)

Applicant's three brothers are citizens and residents of Pakistan. Because Applicant's testimony is not clear about the chronological ages of his three brothers, I am relying on the information he supplied in his e-QIP (GE 1). Applicant's oldest brother is 49 years old. He works for a paint company. Applicant's second oldest brother, 44 years old, owns a shoe store. Applicant's youngest brother, 34 years old, also owns another shoe store. He has owned the store for several years. In 2001, Applicant began the sponsorship process of his youngest brother's immigration application. The three brothers, who are all married, have never had a connection to the government of Pakistan and they have never served in the Pakistani military. (Tr. 44-49, 52-55)

Applicant has contact with his youngest brother by phone. Sometimes the contact is once a month when there is some sponsorship activity to accomplish. The youngest brother's visa was recently approved. (Tr. 52) Otherwise, the contact is once every six months. Applicant's contact with the second oldest brother is once a year by phone. Applicant contacts his oldest brother about once every six months.

Applicant has three sisters who are citizens and residents of Pakistan. Because his testimony is unclear regarding the age of his sisters, I am relying on the information he supplied in e-QIP. Applicant's oldest sister is 62 years old, a widower, and a housewife. His second oldest sister is 46 years old, married, and a housewife. His youngest sister, is 38 years old, married, and a housewife. Applicant's telephone contacts with his sisters occurs on the two major Arab holidays. (Tr. 59-60)

Applicant had two stepsisters, but one passed away. He does not communicate with his oldest stepsister because she has severe hearing problems. He tried to contact her six or seven months ago, but she could not hear him. (Tr. 61)

None of Applicant's siblings have ever traveled to the United States to see him. They know he is an engineer but they do not know where he works or his job responsibilities. They are not aware he is applying for a security clearance. In addition, they live in a rural location in Pakistan and have no knowledge of technology. Applicant currently provides no support to any of his siblings. He provided some money to his deceased stepsister. Two years ago, he paid a \$400 immigration fee for his youngest brother as a part of the continuing sponsorship process. (Tr. 62-66)

Currently, Applicant has a one-eighth property interest in his parents' home where his three brothers are residing. He does not know what the property is worth, but he has no intention of trying to sell or take his share of the property. He has no other assets in Pakistan. (Tr. 66-69) He has stocks and a retirement plan from previous U.S. employers and stocks from his current U.S. employer. He owned his own U.S. home, but sold it. (HE 1; 88-91)

Applicant has traveled to Pakistan every four or five years. In 2008, he visited his family during his attendance at two major Arab holiday events in the middle east. In 2004, he returned for a family reunion. (Tr. 69-70)

Applicant has six children ranging in age from 13 to 26. The three oldest children were born in Pakistan and naturalized in the United States. Applicant's youngest three children were born in the U.S. The oldest child just completed medical school. The second oldest child is a technical support engineer. The third oldest child just completed her undergraduate degree in psychology and aspires for a master's degree and ultimately a post graduate degree in public health. Applicant's three youngest children live with Applicant. (HE 1; GE 1; Tr. 75-79)

Applicant chose to come to the United States because of the freedoms and democratic way of life. He has no intention of returning to live in Pakistan because the United States is his home. Applicant has been briefed by his security office to resist and disclose any attempts by outside influences. (HE 1; Tr. 83-85)

Applicant and his wife have voted in almost all U.S. elections. He has been active in his children's education through the parent-teacher's association. (Tr. 88)

There is no derogatory information in the record showing that Applicant has criminal or financial problems. There is no evidence of drug or alcohol use and no record of offenses related to substance abuse by Applicant. (Answer to SOR; GE 1; HE 1)

Character Evidence

Though he did not personally hire Applicant, witness A reviewed Applicant's application. Witness A has supervised Applicant on two previous occasions since Applicant began working for his current employer in March 2011. Currently, witness A is Applicant's second-line supervisor and has been thoroughly impressed with Applicant's reliability and dedication in ensuring projects are completed in a satisfactory manner. Witness A recommends Applicant for a security clearance. (Tr. 33-39)

Between 2000 and 2005, three of Applicant's children were recognized for academic achievement in elementary, middle, and high school. (AE B)

Applicant received three undated training degrees from a major U.S. computer software company. In 1997, Applicant became an exam-certified technician for computer programs and platform environments. Between 2000 and 2005, Applicant received four computer certifications from another major software company. (AE C)

Applicant's performance evaluation from his U.S. employer for the period April 2000 to March 2001 was "exceeding expectations." His performance from another U.S. employer for 2004 through 2007 was rated as "commendable." (AE D)

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 2001, Pakistan promised to increase its commitment to bolster counterterrorism efforts through extensive campaigns against various terrorist organizations such as Al-Qaida and other extremist groups. There are still extensive terrorist networks within Pakistan that create ongoing security problems by targeting western interests, U.S. citizens, senior Pakistani officials, minority political groups, and religious entities. In September 2012, the U.S. officially declared the Haqqani Network a foreign terrorist organization.

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 three disqualifying conditions that may be pertinent in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and individual's desire to help a foreign person, group, or country by providing that information;

(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 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.

Applicant's three brothers, three sisters, and one stepsister are citizens and residents of Pakistan. He traveled to the country in 2004 for a family reunion and in

2008 for religious activities when he also visited his family. The Government has produced sufficient evidence that Applicant's seven siblings create a potential heightened risk of foreign exploitation and a potential conflict of interest. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 7(e) does not apply to Applicant's 1/8 interest in his parent's home located in Pakistan. Though Applicant could not estimate the value of the home, it is highly unlikely that 1/8 interest could rise to the level of a substantial property interest that would subject Applicant to a heightened risk of foreign influence. Applicant credibly testified that he has no desire to return to Pakistan and collect his interest in the home.

The Government having presented sufficient evidence under AG ¶¶ 7(a) and (b), the burden then moves to Applicant to present evidence under AG ¶ 8 that demonstrates he is unlikely to be placed in a position of having to choose between his family members and U.S. interests. The mitigating conditions are:

(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.;

(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

(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 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. Because terrorism and human rights problems are prevalent in Pakistan, Applicant must show that his siblings in the country do not create a potential heightened risk of foreign exploitation or potential conflict of interest.

None of Applicant's siblings have been employed or affiliated with the Pakistani government or military. None of his siblings have come to the United States to visit him.

They know he is an engineer, but they do not know where he works or what he does at work. None of the siblings know he has applied for a security clearance. Because they live in a rural area, they have no knowledge of technology. Applicant's contacts of one to three times a year with his siblings under the foregoing circumstances suggests it is unlikely that Applicant will be placed in a position of having to choose between his siblings over the interests of the U.S. I reach the same conclusion concerning Applicant's younger brother even though Applicant's contact with him has been more frequent over years. Since Applicant's youngest brother received his visa, Applicant's contact with him has decreased to about twice a year, a level of contact that should remain the same. AG ¶ 8(a) applies in part.

Applicant's connections to the United States are a pivotal factor in finding Applicant's sole loyalty is to the United States. He has lived in this country since 1991 when he was granted political asylum. His spouse is a U.S. citizen. His six children are U.S. citizens. Applicant has been employed by five U.S. employers since 1992. He provided credible testimony of his love for this country. AE ¶ 8(b) applies in part.

Regarding AG ¶ 8(c), an applicant's contacts with his immediate family members are presumed to be close. However, considering the evidence as a whole, the minimal level of contacts that Applicant has with his siblings, combined with the negligible information they have about his job and security clearance status (as discussed under AG ¶ 8(a)), I conclude that AG ¶ 8(c) has limited applicability. Applicant's two visits to Pakistan in 2004 and 2008 before applying for his security clearance have no security significance.

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.

Applicant immigrated to the United States and was granted political asylum in 1991. (AE A) He has lived in this country for 21 years. He has been working for U.S. employers since 1992 and his current supervisor recommends him for a security clearance based on his diligence and reliability in completing tasks. Applicant was

naturalized in the U.S. in 1999 and his wife in 2001. His three older children are naturalized U.S. citizens and his three younger children were born in this country. Applicant's eight certifications in computer technology underscore his proficiency as a network engineer. (AE C) HE 1 and AE B confirm that Applicant has firmly instilled the importance of education in his children.

In reaching my decision in this case, I have carefully considered the dangers present in Pakistan, particularly the terrorist and human rights problems. At any time, terrorists or government operatives could attempt to exert influence through Applicant's siblings. However, Applicant credibly testified that he will be able to successfully resist any attempted foreign influence. His loyalty and love for this country are much stronger than his ties to his siblings in Pakistan. His affinity for the United States. convinces me that he will resolve a potential conflict of interest in favor of the U.S. interest. Considering all the evidence under the foreign influence guideline in the context of the whole-person concept, Applicant has mitigated the security concerns of foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1 (Foreign Influence, Guideline B): | FOR APPLICANT |
| Subparagraph 1.a-1.c: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is 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