



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-15260

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

03/04/2013

Decision

HOWE, Philip S., Administrative Judge:

On April 20, 2011, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 31, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 4, 2012. Applicant submitted several documents as attachments to his Answer. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 12, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant on December 18, 2012. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on January 7, 2013. Applicant filed a Response on January 24, 2013 to the FORM within the 30 day time allowed that would have expired on February 6, 2013. I received the case assignment on January 31, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Pakistan. (Items 6-15) The request and the attached documents were submitted as part of the FORM. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.a, 1.c, 1.r, and 2.a and admitted all other allegations. (Item 2)

Applicant is married and has been since 2003. He has three children. He is 47 years old. Applicant was born in Pakistan. He immigrated to the United States in 2005 and became a U.S. citizen May 1, 2010. He worked in Pakistan as an English teacher until March 2005. He has 26 relatives who are citizens of Pakistan. All but his wife live in Pakistan in an area in which Islamic terrorists reside and operate. Applicant's wife is a citizen of Pakistan and lives with him in the United States. Applicant works for a government contractor in a foreign country as a translator. (Items 3, 4, 5)

Applicant came to the United States on an F32 visa in 2005. He is married to the daughter of a naturalized U.S. citizen, allowing him to obtain this type of visa. His wife is seeking U.S. citizenship and he states in his Answer that the process is in its final stages. After immigrating to the United States, Applicant worked in various retail and casino security positions until he became a translator for a government contractor. In Pakistan he worked as a school teacher in the public school system. (Items 2, 5)

Applicant's mother, six brothers, two sisters, his mother-in-law, one brother-in-law, three sisters-in-law, one uncle, five cousins, and six close friends are all citizens of and residents in Pakistan. They live within the Khyber Pakhtunkhwa (KPK) state. The U.S. Department of State identified the KPK as a terrorist safe haven with a large Taliban and Al Qa'ida presence there. Applicant has two brothers, one uncle, five cousins, and three friends who work for the Pakistan government in various departments. Two cousins and one friend work for the Pakistan military establishment. (Items 2-5)

In January 2010 Applicant was issued a Pakistani passport which will expire in January 2014. Applicant submitted an affidavit dated June 13, 2011, from his Facility Security Officer stating that he surrendered his Pakistani passport. That passport is maintained by his security officer in a secure location. Applicant's Answer denied this allegation in the SOR in Subparagraph 2.a because he had surrendered the passport. Applicant also renounced his Pakistani citizenship on April 11, 2011. The written documents evidencing this renunciation are included in the File. The Department conceded in the FORM that this security concern was mitigated by that surrender. (Item 2)

Since 2005 Applicant has sent approximately \$13,000 to assist his family in Pakistan. He has a bank account with a Pakistani bank in which he states there is \$50 at present. He used the account when he worked in Pakistan as a school teacher. Applicant's mother owns a half acre of farm land in Pakistan she inherited from her father. His mother also owns a home in Pakistan worth about \$55,000, although Applicant contends in his Answer that his share would only be about \$6,000. (Item 4)

Pakistan

I take administrative notice of the facts set forth in the Pakistan Hearing Exhibits. Pakistan is a parliamentary federal republic, created in 1947 after British India was partitioned when the British government granted India its independence. Pakistan was created for the Moslem population of the Indian sub-continent. Its population is about 60 million. It has a coalition government led by a prime minister and president elected in 2009. After September 11, 2001, Pakistan reassessed its relations with the Taliban and supported the U.S. and international coalition in their efforts to remove the Taliban from power. Many Islamic extremists and terrorists are known to inhabit parts of Pakistan, leading to a growth of their insurgency. Although Pakistan has intensified its efforts to deal with the violence and terrorists, the country continues to experience serious problems. The U.S. Department of State confirms that many border cities are known as safe havens for terrorists. Numerous suicide bombings and kidnappings have taken place over the past years. Human rights violations continue to be a significant problem, as killings, torture, and disappearances remain prevalent. The Pakistani government maintains domestic intelligence surveillance activities. The U.S. Government warns Americans against travel to Pakistan. (Items 6-15)

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 are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Three such conditions apply:

- (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 the individual's desire to help a foreign person, group, or country by providing that information; and
- (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.

Applicant's mother, brothers, sisters, brothers-in-law and sisters-in-law, uncles, cousins, and several close friends are citizens of and residents in Pakistan. In addition to their national location, they also live in a region of Pakistan that is a terrorist haven with heavy Taliban and Al Qa'ida presence. Other members of his family work for the Pakistani government and some work for the Pakistan military establishment. A heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion exists because of the large number of these personal associations in Pakistan. AG ¶ 7 (a) applies.

Some of Applicant's relatives in Pakistan are employed by the Pakistani government, including its military establishment. Applicant has family connections to these people that create thereby a potential conflict of interest between his obligation to protect sensitive information and a possible desire to help his relatives by providing that information. AG ¶ 7 (b) applies.

Applicant lives with his wife in the United States. This marital relationship could create a heightened risk of foreign inducement, manipulation, pressure, or coercion because she is a citizen of Pakistan. AG ¶ 7 (d) applies.

AG ¶ 8 provides conditions that could mitigate security concerns:

- (a) 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.;

(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 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of these mitigating factors apply. Applicant's numerous family members and friends in Pakistan, many of whom work for the government, and many who live in a terrorist controlled area, make it likely that Applicant could 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. Further, he provided no evidence of deep and longstanding loyalties to the United States. Applicant's contact with his relatives is not casual or infrequent. Applicant has sent \$13,000 to his Pakistani relatives since 2005, which is evidence of strong ties to his Pakistani relatives. AG ¶¶ 8 (a), (b), and (c) are not applicable.

Any foreign contacts Applicant has in Pakistan are not part of U.S. Government business or approved by the cognizant security authority. AG ¶ 8 (d) does not apply.

There is no relevant information in the File showing Applicant reported foreign contacts in accordance with agency requirements. AG ¶ 8 (e) does not apply.

Applicant's \$50 bank account and his mother's house and farmland are likely to be a cause of conflict of interest and they could be used to manipulate him. Therefore, AG ¶ 8 (f) does not apply.

Guideline C, Foreign Preference

AG ¶ 9 states the security concern involving foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant possessed a Pakistani passport. AG ¶ 10 (a) applies.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant's dual citizenship was based on his birth in Pakistan. He did renounce his Pakistani citizenship in writing in 2011. His Pakistani passport was surrendered and his security officer is maintaining it in a secure location. Mitigating Conditions AG ¶ 11 (a), (b), and (e) apply.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant has extensive family and personal contacts in Pakistan with people who live in a terrorist dominated area. These are significant security concerns. There is great likelihood for pressure, coercion, exploitation, or duress because of these associations. They are ongoing.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. He did mitigate the security concerns under the guideline for Foreign Preference. I conclude the "whole-person" concept against Applicant.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a to 1.t:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For 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.

PHILIP S. HOWE
Administrative Judge

