



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-15222
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/11/2013

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 10, 2010. On August 14, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline B. DOD 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 DOD on September 1, 2006.

Applicant received the SOR on September 15, 2012, and answered it on the same day. Department Counsel requested a hearing and was ready to proceed on February 21, 2013. The case was assigned to me on February 22, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 25, 2013, scheduling the hearing for March 12, 2013. I convened the hearing as scheduled.

Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through K, which were admitted without objection. DOHA received the transcript (Tr.) on March 22, 2013.

Administrative Notice

Department Counsel and Applicant's counsel both requested that I take administrative notice of relevant facts about the Islamic Republic of Pakistan (Pakistan). The requests and supporting documents are attached to the record as Hearing Exhibits (HX) I and II. I took administrative notice as requested by both parties. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

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

Applicant is a 38-year-old linguist employed by a defense contractor since July 2010. He was the owner and operator of a convenience store from August 2001 until he began his current employment. (Tr. 52.) He has never held a security clearance.

Applicant was born in Pakistan and completed high school and technical school in Pakistan in January 1994. He came to the United States in 1998 and became a U.S. citizen in May 2004. He held a Pakistani passport before becoming a U.S. citizen, but he did not use it after becoming a U.S. citizen. His Pakistani passport expired in September 2009. He surrendered it to his security officer when he began his current employment. (Tr. 26.)

Applicant married in August 2002. His wife is a native of Pakistan who came to the United States when she was three years old and is a U.S. citizen. They have three children, who are native-born U.S. citizens. His wife's father is deceased, and her mother is a citizen of Pakistan who is a permanent resident of the United States.

Applicant's mother, father, three brothers, and two sisters are citizens and residents of Pakistan. His mother is a housewife and his father is a farmer. (Tr. 38.) One of his brothers is a lawyer, one is a student, and one is an officer in the Pakistani Air Force. As of the date of the hearing, Applicant had not spoken to his parents or his sisters for about seven or eight months. His last contact with them was when he was in the United States on leave from his duties in Afghanistan. (Tr. 28, 30.) He had not spoken with two of his brothers, who live with their parents, for more than a year. He has had no contact with his brother who is in the Pakistani Air Force since 2005, because he does not know where he is assigned and has no contact information. (Tr. 29.) He knows that his brother was a pilot, but he does not know his current duties. (Tr. 44-45.) Before he began his current employment, he talked with his parents two or three times a month. He does not call them when he is deployed, because he has no access to communication facilities that can reach his family in Pakistan. However, he

occasionally uses a U.S. military satellite telephone to contact his wife and children. (Tr. 36-37.)

Applicant last saw his family members in person when he attended his sister's wedding in Pakistan in 2005. (Tr. 47.) In 2008, Applicant's mother visited him in the United States. She visited again in 2010, but Applicant did not see her because he was deployed. No other family members have come to the United States to visit him. (Tr. 48.)

Applicant's parents and two civilian brothers live together in an apartment. He believes that it is privately owned, even though the mailing address is a government housing society. (Tr. 40-41.) He has no property or financial interests in Pakistan. (Tr. 25.)

Applicant testified that his convenience store was a financial success, but he decided to sell his business and work as a linguist for the U.S. forces because he wanted to help the United States. (Tr. 52.) He is currently assigned to work with a U.S. Marine Corps unit in Afghanistan. He lives with his unit, accompanies it on patrols, and frequently has been subject to hostile fire. (Tr. 49.) As of the date of the hearing, he had completed three six-month deployments to Afghanistan, and he returned to Afghanistan shortly after the hearing to complete his fourth deployment. (Tr. 33-35.) Applicant has received numerous unit coins, commendations, and certificates of appreciation for his outstanding performance of duty. (AX G through K.)

The commander of the battalion to whom Applicant is assigned, a Marine lieutenant colonel, submitted a letter describing his performance as "exemplary." The battalion commander stated that Applicant's work ethic and style have made him an example for other linguists and have earned him the respect of the Marines in the battalion. (AX A.) In a separate letter (AX F), this battalion commander stated:

[Applicant] is a hard worker, skillful interpreter, and an organized planner. He possesses the polish and maturity needed to operate at the battalion level and has shown deftness in participating in highly charged political situations. . . . Given my choice of interpreters, I would willingly seek out [Applicant] above all others for his proficiency, demeanor, and the high degree of confidence that I have in him.

The battalion's assistant operations officer, a Marine captain, has worked with Applicant for more than a year and a half submitted a letter stating: "I have personally witnessed the bravery and dedication of [Applicant] to the mission and his fellow Marines. Standing shoulder to shoulder with Marines without hesitation, [Applicant] has risked his life to provide vital communications capabilities to Marines on the ground." (AX B.)

Applicant's platoon commander, a Marine first lieutenant, submitted a letter stating that Applicant participated in more than 50 dismounted patrols and was involved

in more than 20 instances of hostile contact, “routinely risking his own life to alert innocent local nationals of impending contact by exposing himself under fire.” (AX E.)

The unit linguist manager, a U.S. Marine master sergeant, describes Applicant’s performance of duty as “exemplary.” (AX D.) A Navy chief petty officer, who worked with Applicant for three months, training members of the Afghan National Security Forces in an explosive hazard reduction course, submitted a letter commenting on Applicant’s cultural expertise and “heartfelt interest” in the progress of the Afghan students. (AX C.)

None of Applicant’s family members know that he works for the U.S. forces in Afghanistan. (Tr. 27.) He testified that he has not told them what he does because he wants to keep a “low profile.” (Tr. 48-49.)

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. The United States regards Pakistan as a partner in the war against terrorism and is trying to strengthen that partnership by assisting Pakistan in making improvements in its economy, health, human rights, sustainable democracy, and counterterrorism. The United States and Pakistan are working to strengthen coordination and communication, improve enforcement of existing laws on the transport and storage of improved explosive devices (IED) precursors, increase public awareness of the threat posed by IED networks and facilitators, disrupt financial flows that support these networks, and improve interdiction efforts. However, Pakistan’s 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 some militant groups to be important in its efforts to counter India’s military and economic advantages.

Al Qaeda, Taliban, and other military groups use the loosely-controlled border regions between Afghanistan and Pakistan as a safe haven. The former leader of Al Qaeda, Osama bin Laden, was killed by U.S. forces in Pakistan in May 2011. Despite increased efforts by Pakistani security forces, these groups continue to find safe haven in these areas.

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 wide-spread government corruption.

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 and 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 that 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 mother, father, three brothers, and two sisters are citizens and residents of Pakistan (SOR ¶¶ 1.a, 1.b, and 1.d), and that one of Applicant’s brothers is an officer in the Pakistani Air Force (SOR ¶ 1.c). 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.

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).

When 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). Applicant’s family connections to his parents and siblings are sufficient to establish the “heightened risk” in AG ¶ 7(a) and create the potential conflict of interest in AG ¶ 7(b). Although Applicant’s wife is a native of Pakistan, she has lived in the United States since childhood, is a U.S. citizen, and has no family members living outside the United States. Thus, I conclude that AG ¶ 7(d) is not established.

Three mitigating conditions are potentially relevant:

AG ¶ 8(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.;

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 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; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The insurgent and terrorist activity in Pakistan and the connection between one of Applicant's brothers and the Pakistani Air Force preclude application of AG ¶ 8(a). However, the evidence establishes AG ¶ 8(b). Applicant's connections to his family members are not "minimal," but his connections to the United States are strong. He has been a U.S. citizen since 2004, his wife and children are U.S. citizens, and he has demonstrated his strong loyalty to the United States by repeatedly putting himself in harm's way to assist the U.S. Marine units to which he has been assigned. The testimonials of the military officers and noncommissioned officers with whom Applicant has served under fire constitute "credible, independent evidence" that he can be trusted with sensitive or classified information and can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation. See ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008). He has a track record of trustworthiness, dedication, and dependability "in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security." See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008).

Although Applicant's contacts with his parents and siblings have been infrequent, I conclude that AG ¶ 8(c) is not fully established. It is established for his Pakistani Air Force brother, because they have had no contact for more than seven years. However, he was in regular contact with his parents and other siblings until he deployed. His lack of contact with them has been due in part to the lack of communication facilities in the areas where he has been deployed. Furthermore, he has not rebutted the presumption that contacts with an immediate family member in a foreign country are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

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

