



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



In the matter of:

)	
)	ISCR Case No. 12-00895
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

02/15/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns for financial considerations under Guideline F and foreign influence under Guideline B. Eligibility for access to classified information is denied.

On August 8, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 4) Applicant was interviewed by security investigators from the Office of Personnel Management (OPM) on August 19, 2011. (Item 7) On November 17, 2011, Applicant submitted another e-QIP. (Item 9) On August 16, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and foreign influence under Guideline B. (Item 1) 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 in the DOD on September 1, 2006. Applicant received the SOR on September 7, 2012. (Item 2)

Applicant answered the SOR on September 8, 2012, admitting all of the allegations under both guidelines with explanation. Applicant elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on October 25, 2012. Applicant received a complete file of relevant material (FORM) on December 25, 2012, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He provided additional information in response to the FORM by a sworn statement dated December 26, 2012. The Government responded to Applicant's statement on January 10, 2013. The Government's additional statement was sent to Applicant, but he has not provided additional information in response. The case was assigned to me on January 25, 2013.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 58 years old and has worked for a defense contractor as a linguist since August 2011. He was born in Pakistan and immigrated to the United States in 1996. He became a United States citizen in 2003. Since his arrival in the U.S., Applicant has worked as a computer salesman, a sandwich shop owner, and a taxi driver. He is married with two daughters and a son. His children are all United States citizens. His wife is still a Pakistani citizen. (Item 9)

Credit reports (Item 5, dated July 5, 2011; Item 6, dated August 11, 2011; Item 8, dated November 27, 2011, and Item 15, dated August 14, 2012) show the following delinquent debts for Applicant: a credit card debt in collection for \$6,652 (SOR 1.a); credit card debts in collection to the same creditor for \$2,954 (SOR 1.b), \$2,252 (SOR 1.c), \$1,639 (SOR 1.d), \$1,594 (SOR 1.e), and \$7,529 (SOR 1.i); a department store credit card debt in collection for \$1,274 (SOR 1.f); a credit card debt in collection for \$3,951 (SOR 1.g); two credit card debts in collection to the same creditor for \$1,134 (SOR 1.h), and \$892 (SOR 1.k); a credit card debt in collection for \$9,004 (SOR 1.j), and a parking ticket debt for \$45 (SOR 1.l). Applicant admits all the debts listed in the SOR. The total delinquent debt alleged in the SOR is approximately \$39,920.

In response to security investigators questions, Applicant admitted the delinquent debts. He noted that the credit card debts at SOR 1.a and SOR 1.j were incurred because he used them in his sandwich shop business. The debt at SOR 1.l is from parking tickets as a taxi driver that he thought he paid. He did not to provide information on his other delinquent accounts. Applicant noted that he had a difficult time paying his debts starting in 2010 when his wife became ill and he had to pay her medical expenses. He opened credit accounts to maintain his family's standard of living. He was unable to pay the credit card debts. (Item 7)

In response to the SOR, Applicant stated that he has been deployed to Afghanistan for eight months. He did not have the time or opportunity prior to his deployment to settle his debts. He returned from deployment on leave in August 2012, and gave his son a power of attorney to settle and pay his debts. He provided no information or receipts to show that his son paid or resolved any of the debts. (Item 3) His response to the FORM did not include any additional information on his finances. (Response, dated December 26, 2012)

The SOR alleges that Applicant's two brothers are citizens and residents of Pakistan (SOR 2.a); that his cousin is a citizen and resident of Pakistan (SOR 2.b); that a cousin or brother-in-law is a citizen and resident of Pakistan (SOR 2.c); that a sister is a citizen and resident of Pakistan (SOR 2.d); that he has nieces and nephews that are citizens and residents of Pakistan (SOR 2.e); that he has a friend that is a citizen and resident of Pakistan (SOR 2.f); and that his wife is a citizen of Pakistan residing in the United States (SOR 2.g). Applicant admits the allegations in response to the SOR. He provided no further information in his response concerning his relatives and friends in Pakistan. (Item 3)

Applicant informed security investigators that he and his family came to the United States in 1996 for a better life and employment opportunities. He feels close ties to the values and way of life he has experienced in the United States. He and his children are United States citizens and his wife is working to be a United States citizen. When he entered the United States, he relinquished his Pakistani citizenship rights. He never served in the Pakistani military and does not have an obligation to serve in the Pakistani military. His Pakistan passport expired in 2000 and he has made no effort to renew it. The passports of all of his family have expired.

Applicant has known the childhood friend mentioned at SOR 2.f since 1975. His friend works as an electrical engineer in Pakistan. He has contact with his friend once a year by phone. (Item 7 at 2)

Applicant has known his cousin mentioned at SOR 2.b since 1963. His cousin works in an import-export business in Pakistan. He talks to his cousin once or twice a month by telephone. (Item 7 at 2)

Applicant has known his brother-in-law mentioned at SOR 2.c since 1960. He does not know his brother-in-law's employment. Applicant speaks with him by phone about once or twice a year. (Item 7 at 2-3)

Applicant's sister mentioned at SOR 2.d is a housewife. He has contact with her about every two months by phone. (Item 7 at 3) One of his brothers is a retired employee of the Pakistan Food and Drug Department. The other is a minister. He speaks to both about once every two months. (Item 7 at 3)

Applicant does not communicate with any of his other relatives in Pakistan. He has not been contacted by the Pakistan government, and he does not have a foreign

preference or sympathy for Pakistan because of his relatives. His relatives have not asked him to provide any information to them. He does not believe his relatives are associated with any groups or organizations that seek to harm the United States. Applicant himself has never been involved with any group seeking to unlawfully overthrow the U.S. Government. (Item 7 at 3)

In response to the FORM, Applicant stated that he has contact with one of his brothers about once a month by phone. He has contact with the rest of his family only on special occasions, such as religious holidays and marriages or deaths. He has returned to Pakistan only once in 1999. (Response dated December 26, 2012)

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 11, 2001, Pakistan promised to increase its commitment to bolster counterterrorist efforts through extensive campaigns against various terrorist organizations such as Al-Qaida and other extremists groups. There are still extensive terrorist networks in Pakistan that create ongoing security problems by targeting western interests, U.S. citizens, senior Pakistan officials, minority political groups, and religious entities. In September 2012, the U.S. officially declared the Haqqani Network in Pakistan a foreign terrorist organization. About the same time, the Taliban took credit for attempting to kill a young girl for speaking in favor of education for girls. Fortunately, they were not successful in their assassination attempt. This indicates the degree of violence against new and western ideals.

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.

Policy

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 must be considered 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, these guidelines are applied 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.

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 for obtaining a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, thereby raising questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts, listed in credit reports and admitted by Applicant, raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not

meeting financial obligations). The delinquent debts show a history of both an inability and an unwillingness to pay debts.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition. The burden does not shift to the Government.

I considered Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation) and the individual acted responsibly under the circumstances). These mitigating conditions do not apply. Applicant incurred delinquent debt from his sandwich shop business, from use of credit cards to maintain his standard of living, and from unpaid parking tickets. He presented no information to indicate that the debts were incurred under such unusual circumstances that the debts would not recur. In fact, it appears the debts were incurred by Applicant in the normal course of living. Applicant indicated that he provided his son with a power of attorney to pay his debts. Applicant presented no information, evidence, or documentation to verify his son made any agreements to pay or resolve any debts. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control.

I considered FC MC ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control). Applicant presented no information to indicate an agreement with a debt solution company which may require that Applicant receive credit counseling. There is no indication his financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant failed to establish such a meaningful track record. Applicant did not present any evidence to show agreements with creditors or any payments on the debts.

Applicant's lack of documented action to pay his debts is significant and disqualifying. Based on the acknowledged delinquent debts and failure to establish payment of the debts, Applicant has not acted responsibly towards his debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Guideline B: Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interest, 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 consideration 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 ¶ 6)

Applicant has relatives and friends that are citizens and residents of Pakistan. He has contact with them by telephone a few times year. He returned to Pakistan for a visit in 1999. No matter how limited and infrequent, his contacts and relationships with family members and friends in Pakistan creates a security concern and raises Foreign Influence Disqualifying Conditions 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); and 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). Applicant's wife, a citizen of Pakistan residing with him in the United States, raises 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 existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally-existing risk that can be inherent any time there are foreign contacts and relationships. One factor that heightens the risk in Applicant's case is the terrorism and human rights problems prevalent in Pakistan.

Applicant raised facts to mitigate the security concerns arising from his relatives and friends in Pakistan. I have considered Foreign Influence Mitigating Conditions 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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." The Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he or she is forced to make a choice between the interest of the family member and the interest of the United States. (See, ISCR Case No. 03-17620, App. Bd. Apr. 17, 2006; ISCR Case No. 03-24933, App. Bd. Jul. 28, 2005; and ISCR Case No. 03-02382, App. Bd. Feb. 15, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

Applicant's family members and friends that are citizens and residents of Pakistan, and the on-going terrorist activities and human rights violations in Pakistan place a heavy burden on him to mitigate the disqualifying conditions and the security concerns. Applicant visited Pakistan only once since he left in 1996. Applicant has contact with his friends and relatives by telephone every few months. While the contacts are not frequent, the contacts are ongoing and not casual, including his cousins and brother-in-law. The mere existence of the contacts under the circumstances shows that the family relationships are close and not casual. Since these relationships are not causal or infrequent and there are adverse human rights conditions and terrorist activities in Pakistan, there can be circumstances where Applicant is placed in a position to have to choose between the interests of his family members and friends and the interest of the United States. AG ¶¶ 8(a) and 8(c) do not apply.

Applicant left Pakistan for a better life, and returned once for a limited time. He does not appear to have any allegiance or sense of loyalty to the government of Pakistan. He has lived in the United States for over 17 years. He became a United States citizen, and his children are United States citizens. He has no reported property or financial interests in Pakistan. Applicant has a sense of admiration for the United States and its way of life. He sees the United States as offering him and his family an opportunity for each to reach their potential. However, a conflict of interest in this case is still likely. Applicant's relatives and friends as citizens and residents of Pakistan may place him a position that he has to choose between them and the interests of the United States. There is no clear indication that Applicant can be expected to resolve any

conflict of interest in favor of the United States. In balancing all of the factors mentioned and considered above, I am not satisfied Applicant can be expected to resolve any conflict of interest in favor of the United States interest. AG ¶ 8(b) does not apply.

Applicant has not met his heavy burden to show that his relatives and friends in Pakistan do not cause a security concern. In balancing all of the factors mentioned and considered above, I am not satisfied Applicant can be expected to resolve any conflict of interest in favor of the United States. I conclude Applicant has not mitigated security concerns for foreign influence arising from his relatives and friends in Pakistan.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 the facts and circumstances surrounding this case. Applicant has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems. He has not even shown that he has a credible plan to resolve and pay his delinquent debts. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or act responsibly in regard to classified information.

Applicant also has not mitigated security concerns based on his relatives and friends in Pakistan. His contact with them is not infrequent or casual and there is a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion based on human rights violations and terrorist activities in Pakistan.

Overall, the record evidence leaves me with questions and doubts about Applicant's reliability and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and foreign influence. Eligibility for access to classified information is denied.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.i:	Against Applicant
Paragraph 2, Guideline B;	AGAINST APPLICANT
Subparagraphs 2.a – 2.g:	Against 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge