



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-00908

Appearances

For Government: Daniel F. Crowley, Department Counsel
For Applicant: *Pro se*

August 22, 2013

Decision

LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 19, 2011. (Government Exhibit 5) On August 29, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, C, E, and F for Applicant. 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 after September 1, 2006.

Applicant responded to the SOR in writing on October 12, 2012, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on March 4, 2013. Applicant received the FORM on April 25, 2013. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM dated May 7, 2013. This case was assigned to the undersigned on May 31, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel submitted a request that I take administrative notice of certain facts concerning the current political conditions in Pakistan. Applicant made no objection. The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the FORM and the exhibits. The Applicant is 47 years of age and is employed as a linguist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant admitted each of the allegations set forth in the SOR under this guideline, except 1(a). He denies that his daughter is a citizen of Pakistan, as she is now a United States citizen. (See Applicant's Answer to SOR.) Applicant was born in Pakistan in 1965. In 1996, he immigrated to the United States. He became a naturalized United States citizen in December 2003. At the time he was naturalized, he changed his name from Khudai Rahim to Nazeer Ahmed Qwazi. Before gaining employment as a linguist in 2011, in Afghanistan, Applicant worked in the United States in the sales business, often running his own retail business.

Applicant has two brothers who are citizens of and reside in Pakistan. His parents-in-law, four sisters-in-law and three brothers-in-law are also citizens and residents of Pakistan. His brothers are employed in the produce business and he contacts them about twice a year. One of his brother-in-laws is a teacher at a University in Pakistan. Applicant indicates that he has contact with his in-laws from one to five times per year.

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant denied allegation 2(a) and admitted 2(b) set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) The Applicant has traveled to Pakistan on various occasions to visit his relatives there. In his response to the FORM, Applicant indicates that he traveled to Pakistan in April 2001 to get married, in May 2001, and in August 2002, to visit his family there. Besides these visits, he claims that he has not made any visits using his Pakistani passport. The Government contends that he used his Pakistani passport that he obtained on January 31, 2001, to travel to Pakistan in approximately 2004, 2007, and 2008, even though he had already become

a naturalized United States citizen on December 11, 2003, and was issued a United States passport on December 22, 2003. Applicant reports that he had possession of the 2001 Pakistani passport until May 2011, but contends that he has lost this Pakistani passport. If this Pakistani passport exists there is a question as to whether it has expired or remains valid.

In 2008, Applicant purchased a condominium to be built in Pakistan. He indicates that at some point he fell behind on the payments because of his excessive debt and that he no longer has the property.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant denied each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Applicant completed a security clearance application dated September 19, 2011. Section 20B (6) of the application asks him if he has ever held or does he now hold a passport that was issued by a foreign government. The Applicant responded, "Yes," and listed only his Pakistan passport valid from September 1995 through September 2000. He failed to disclose that he had also obtained a Pakistani passport on January 31, 2001. Applicant claims that he did not understand the question on the security clearance application when he answered this question. Given the fact that he is a linguist whose job it is to interpret the language as well as understand English, I do not find this excuse to be credible. I find this to be a deliberate omission without any justifiable excuse.

On September 27, 2011, Applicant completed a Counterintelligence-focused security screening questionnaire and stated that he had lost his Pakistani passport which he had obtained on January 31, 2001, when he applied for the linguist position. He states that he has asked his wife to look for it. (Applicant's Answer to SOR.) It is unclear from the evidence whether the Applicant has simply misplaced this foreign passport and it remains in his possession since it has not been destroyed or surrendered.

Paragraph 4 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant denied each of the allegations set forth in the SOR under this guideline and provided an explanation. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated September 22, 2011, and August 24, 2012, reflect that at one time Applicant was indebted to each of the eleven creditors set forth in the SOR, in an amount totaling over \$65,000. (Government Exhibits 17 and 19.) Applicant attributes his financial problems to several unsuccessful business ventures coupled with the downfall in the economy. He explained that he opened a grocery store that was not profitable and it was ultimately repossessed. Another store he opened was broken into four times and as a result, he suffered big losses. He was also involved in two car accidents where he was hit from behind that caused unexpected expenses.

Applicant claims that each of the delinquent debts listed in the SOR have been paid. To support his argument, Applicant provided a letter from the creditor concerning the debt set forth in allegation 1(a) showing that the debt has been paid. (See Applicant's Response to FORM.) Although the account number is different, Applicant provided a letter asserting that the debt listed in 1(c) has been paid. (See Applicant's Response to FORM.) Applicant provided a satisfaction of judgment he received concerning the debt listed in allegation 1(f). (See Applicant's Response to FORM.) His credit report dated September 24, 2012, shows that the debt listed in 1(h) has been paid. (See Applicant's Response to FORM.) There is no evidence or insufficient evidence to show that the delinquent debts set forth in allegations 1(b), 1(g), 1(i), 1(j), and 1(k) have been paid. (See Applicant's Response to FORM.) The credit report does show however that he is paying most of his bills as agreed.

Letters of recommendation submitted on behalf of the Applicant dated December 26, 2011, from the Commanding Officer indicates that Applicant's services have made a positive impact on the operation. His cultural knowledge, and unique skills are very much appreciated and he is thanked for a job well done. (See Applicant's Response to FORM.)

Applicant received a Certificate of Merit and appreciation dated October 1, 2012, for his dedication to the mission. (See Applicant's Response to FORM.)

I have taken official notice of the following facts concerning the country of Pakistan. Pakistan is a low-income country, with a population that is 97% Muslim. It has a coalition government led by Prime Minister Yousef Gilani and President Asif Ali Zardari, widower of assassinated Pakistan People's Party leader Benazir Bhutto. Although Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001, Pakistan reassessed its relations with the Taliban and pledged support to the U. S. and international coalition in Operation Enduring Freedom to remove the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leader of the Taliban, Mullah Omar, is operating openly in Pakistan. Extremists led by Pakistani Taliban commander Baitullah Mehsud and other al-Qaida extremists have re-exerted their hold over areas in the FATA and the North West Frontier Province (NWFP). The TTP has gained support by promising to fill a vacuum left by ineffective government structures. Streams of Taliban financing crossing the border of Pakistan to Afghanistan has allowed the insurgency in Afghanistan to strengthen its military and technical capabilities.

In addition to the Taliban, the FATA in Pakistan continues to provide vital sanctuary to al-Qaida and a number of foreign and Pakistan-based extremist groups. The security situation in Afghanistan continued to worsen in 2008, including an increase in al-Qaida's presence to levels unseen since 2001-2002, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency while also planning attacks against the U.S. and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare

regional and transnational attacks, disseminate propaganda and obtain equipment and supplies.

The Pakistan Government has a poor human rights record. Reported human rights problems in Pakistan include extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread corruption, disappearance and imprisonment of political opponents, and trafficking in women and children. Pakistan creates concern for the United States because of weapon technology transfers and weapon technology cooperation with certain countries. Pakistan has also supplied nuclear technology to Iran and Libya and sought assistance from both North Korea and China for its own weapons programs.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

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;

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.

Conditions that could mitigate security concerns:

None.

Foreign Preference

9. *The Concern.* 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.

Condition that could raise a security concern:

10. (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.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16. (a) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16. (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Conditions that could mitigate security concerns:

None.

Guideline F (Financial Considerations)

18. *The Concern.* 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, all of which can raise 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.

Conditions that could raise a security concern:

- 19. (a) inability or unwillingness to satisfy debts; and
- 19. (c) a history of not meeting financial obligation.

Conditions that could mitigate security concerns:

20. (b) the conditions that resulted in the financial problem 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;

20. (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information. The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (Foreign Influence), Guideline C (Foreign Preference), Guideline E (Personal Conduct) and Guideline F (Financial Considerations) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation that demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign influence, has foreign connections, is dishonest and has financial problems may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

In regards to the Applicant’s finances, it appears that he has paid off some of his debts, including the larger ones, while others still show that they are owing. Under Financial Considerations, Disqualifying Conditions 19. (a) inability or unwillingness to

satisfy debts; and 19. (c) *a history of not meeting financial obligation* apply. Mitigating conditions 20. (b) *the conditions that resulted in the financial problem 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,* and 19. (d) the individual initiated a good faith-effort to repay overdue creditors or otherwise resolve debts also apply. The evidence is confusing since the Applicant submitted copies of receipts without corresponding them to a particular delinquent debt in the SOR. However, there is sufficient evidence to show that he is resolving his delinquent debt. Accordingly, I find for the Applicant under Guideline F (Financial Considerations.)

The evidence shows that the Applicant, who was born in Pakistan, has strong foreign family ties in Pakistan. His two brothers, parents-in-law, four sister-in-law and three brothers-in-law are citizens and residents of Pakistan and he continues to maintain contact with them. Given these facts, there is cause for concern in this case. Under Foreign Influence, Disqualifying Conditions 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 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* apply. None of the Mitigating Conditions apply.

In this case, Applicant's family in Pakistan creates a risk for foreign influence or exploitation, and he may become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant may be in a vulnerable position and subject to coercion, exploitation and/or pressure by the Pakistani government. It is also noted that the current political situation in Pakistan elevates the cause for concern in this case. Pakistan creates concern for the United States because of weapon technology transfers and weapon technology cooperation with certain countries. Pakistan has also supplied nuclear technology to Iran and Libya and sought assistance from both North Korea and China for its own weapons programs. In this case, the possibilities are great that the Applicant may at some point be placed in a position to be forced to choose between the interests of a foreign individual, group organization, or government and the interests of the United States Therefore, there is a possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. Thus, I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

The Applicant may have traveled to Pakistan using his foreign passport even after becoming a United States citizen. However, this is not conclusive. Applicant states that since applying for the linguist position he has lost his foreign passport. This is ironic, suspicious, and most unusual. Consequently, the United States is unable to check the foreign passport to ascertain this information. Given the circumstances, I will presume at best that he has misplaced his foreign passport and that it still remains in his possession. Under Foreign Preference, Disqualifying Condition 10. (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 applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline C (Foreign Preference).

Most troubling is the fact that the Applicant was not truthful or candid in answering the questions on his security clearance application about his foreign passport when he listed that it was only valid from September 1995 to September 2000, giving the United States the impression that he did not have one after that date, when in fact he had obtained another one that was issued to him on January 31, 2001. Based upon this Applicant's questionable behavior, the Applicant cannot be trusted with the national secrets. Under Personal Conduct, Disqualifying Conditions 16.(a) *the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;* and 16.(b) *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* apply. None of the mitigating conditions are applicable. I find the Applicant has not been truthful or candid with the Government concerning his passport and therefore cannot be trusted with the national secrets. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Furthermore, there is little evidence in support of mitigation under the whole-person analysis. The Applicant did submit one letter of recommendation and a certificate of appreciation for his work, however this favorable evidence is insufficient to mitigate the security concerns in this case or to support security clearance eligibility. I have considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines B, C, and E of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has failed to meet his ultimate burden of persuasion under Guidelines B, C, and E. Guideline F is found for the Applicant.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant

Subpara. 1.b.: Against the Applicant

Subpara. 1.c.: Against the Applicant

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant

Subpara. 2.b.: Against the Applicant

Paragraph 3: Against the Applicant.

Subpara.1 3.a.: Against the Applicant

Subpara. 3.b.: Against the Applicant

Paragraph 4: For the Applicant.

Subpara. 4.a.: For the Applicant

Subpara. 4.b.: For the Applicant

Subpara. 4.c.: For the Applicant

Subpara. 4.d.: For the Applicant

Subpara. 4.e.: For the Applicant

Subpara. 4.f.: For the Applicant

Subpara. 4.g.: For the Applicant

Subpara. 4.h.: For the Applicant

Subpara. 4.i.: For the Applicant

Subpara. 4.j.: For the Applicant

Subpara. 4.k.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge