



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



In the matter of:)	
)	
)	ISCR Case No. 12-00899
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline C, foreign preference, but failed to mitigate the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On July 31, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On September 1, 2012, Applicant answered the SOR and elected to have his case decided on the written record. On November 2, 2012, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on December 22, 2012. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on January 23, 2013.

Request for Administrative Notice

Department Counsel submitted a formal request, included in the FORM, that I take administrative notice of certain facts relating to Pakistan. Applicant did not object and the request is approved. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all the SOR allegations.¹ After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He is a high school graduate. He was born in Pakistan. He married in 1993 and divorced in 1995. He remarried in 1996. He has a 17-year-old son. Applicant has worked for a federal contractor since July 2011. He works and resides in Afghanistan as part of his employment.

In 1991, Applicant left Pakistan and traveled to Ecuador. He attempted to seek political asylum there. He was a member of a student organization, and he left Pakistan because of political pressure. He chose Ecuador because of its relaxed entrance policy. He began the process for asylum in Ecuador, but never followed through. He then traveled to the United States and was arrested and detained at the airport by the Immigration and Naturalization Service (INS). His detention continued for two weeks. He asked for political asylum in the United States. He was given an I-94 visa which is for temporary stays in the United States.² Applicant overstayed his visa and was illegally in the United States from July 1991 to 1995. During a U.S. Government screening he told the investigator that he married a U.S. citizen and was granted Permanent Resident status. His second wife sponsored him for U.S. citizenship. He became a United States citizen in 2009.³

Applicant was issued a United States passport in February 2011. He has a Pakistani passport issued in 2000 that expired in 2005. He has another Pakistani

¹ Item 3.

² Form I-94 is used to record the arrival and departure of all visitors and for temporary stays. www.immigrationunitedstates.org.

³ Item 6.

passport issued in 2007 that expired in October 2012. In his security clearance application (SCA), dated July 3, 2011, Applicant responded to questions under Section 10, Citizenship Information, that he was a citizen of Pakistan and the United States. He indicated he had not renounced or attempted to renounce his foreign citizenship. He provided a statement in the explanation section of the SCA: "I will be surrendering my Passport to the FSO of [A] by the end of my employment process."⁴

In Applicant's response to the SOR, he stated:

The passport I possessed from Islamic Republic of Pakistan was issued to me on October 29, 2007, and I became a citizen of the United States of America on July 30, 2009!

In his response to the FORM he stated:

The valid passport I possess from Islamic Republic of Pakistan was issued to me before I became a citizen of the U.S. I was willing to surrender all my valid and expired passports but no ones (*sic*) asked for it. No I have no use no plans to renew my expired Pakistan passport. In the past I done it because I needed the passport to travel.⁵

There was no additional information provided as to whether Applicant surrendered his Pakistani passport to any official. There is no evidence that Applicant exercises dual citizenship.

Applicant's mother, father, three brothers and nephew are citizens and residents of Pakistan. His father owns a house and farm land in Pakistan.⁶ Applicant traveled to Pakistan for family visits in April 2011 to May 2011, October 2008 to December 2008, January 2005 to March 2005, February 2003 to April 2003, January 2001 to March 2001, and October 1997 to January 1998.⁷ Prior to becoming a U.S. citizen, Applicant used his Pakistani passport. Once he became a U.S. citizen he used his U.S. passport.⁸ Applicant provided his nephew \$500 to help the nephew buy a cell phone business. Applicant provided no other information about his family in Pakistan.

⁴ Item 4.

⁵ Response to FORM dated December 25, 2012.

⁶ Item 6.

⁷ Item 7.

⁸ Items 5 and 7.

Pakistan

Pakistan has extensive terrorist networks operating within its borders. Members of the Taliban are known to be located in provinces of Pakistan and their senior leaders continue to enjoy safe haven there. The leader of the Taliban has operated openly in Pakistan.

The Federally Administered Tribal Area (FATA) of Pakistan continues to be a vital sanctuary to al-Qa'ida and other extremist groups. Al-Qa'ida and other Afghan extremist groups exploit that operating environment to plan and direct operations. Al-Qa'ida operatives are balancing support for attacks in Pakistan with guidance to refocus the global jihad externally, against U.S. targets. Pakistan military leaders have limited success against al-Qa'ida operatives, other foreign fighters, and Pakistani militants who pose a threat to Islamabad.

The U.S. Department of State has defined terrorist safe havens as ungoverned, under-governed, or ill-governed physical areas where terrorist groups that constitute a threat to U.S. national security interests are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security because of inadequate governance capacity, political will, or both. The U.S. Department of State has concluded that, despite increased efforts by Pakistani security forces, al-Qa'ida terrorists, Afghan militants, foreign insurgents, and Pakistani militants continue to find safe haven in portions of Pakistan's FATA, Khyber Paktunkwa, and Baluchistan, and have operated in those areas to organize, train, and plan attacks against the United States and its allies in Afghanistan.

The Haqqani Network, an extremist organization operating as a strategic arm of Pakistan's Inter-Service Intelligence Agency, is also operating from Pakistan with impunity. U.S. special forces personnel raided a large al-Qa'ida compound located in Pakistan and shot and killed their leader Osama bin Laden.

The U.S. State Department warns U.S. citizens to defer traveling to Pakistan, as the presence of al-Qa'ida, Taliban elements, and indigenous militant sectarian groups poses a danger to American citizens. In 2011, Pakistan experienced hundreds of bomb blasts, suicide attacks, and sectarian violence resulting in thousands of deaths. These included attacks that targeted Americans. Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit.

Pakistan has major human rights problems that include extrajudicial killings, torture and disappearances committed by security forces, as well as by militant, terrorist and extremist groups.

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 used 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." 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. I have considered all of them and the following are potentially applicable:

- (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
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's parents, three brothers and a nephew are citizens and residents of Pakistan. Applicant takes trips to Pakistan to visit his family there. I find the above disqualifying conditions apply. Applicant provided his nephew with a \$500 loan to help purchase a cell phone business. I find the amount of the loan is minimal and does not constitute a disqualifying condition.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and the following are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests;

(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; 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.

Applicant did not provide any information about his family or his relationship with them in Pakistan. There is insufficient evidence to conclude that his familial connections and the nature of his relationship with them make it unlikely that he would be placed in a position of having to choose between their interests and the interests of the United States.

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 foreign government or the country is known to conduct intelligence operations against the United States. Applicant's immediate family members are citizens and residents of Pakistan. It is clear that Pakistan has numerous terrorist organizations that target U.S. citizens. Pakistan's human rights record is poor. Applicant's travel history shows he has visited Pakistan frequently in the past. No information was provided regarding the nature of the relationship between Applicant and his family in Pakistan, or his and his family's relationship with the Pakistani government. Applicant has been a U.S. citizen for three years. Applicant failed to establish there is no conflict of interest because of his longstanding relationships and loyalties to the United States. Based on the information in the record, I conclude AG ¶¶ 8(a) and 8(b) do not apply.

Applicant travels to Pakistan regularly. He lists the purpose of his visits is to see his family. His relationship with his family cannot be characterized as casual and infrequent. Therefore, I am unable to conclude that there is little likelihood that it could create a risk of foreign influence or exploitation. I conclude AG ¶ 8(c) does not apply.

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern regarding 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. I have specifically considered the following:

(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...

Applicant does not have a valid foreign passport. His Pakistani passport expired in October 2012, and he does not intend on renewing it. He obtained the Pakistani passport prior to becoming a U.S. citizen. He did not use the Pakistani passport once he became a U.S. citizen. His explanation that he did not intend on renewing his passport shows he does not consider himself a citizen of Pakistan. I find the above disqualifying condition does not 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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments

under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 47 years old. He no longer holds a valid Pakistani passport. He obtained his U.S. citizenship in 2009. He has close family members who are citizens and residents of Pakistan, a country with serious terrorist and human rights issues. He visits them regularly. His family living in Pakistan is a security concern. Insufficient mitigating information was provided. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns raised under Guideline C, foreign preference, but failed to mitigate the security concerns arising under Guideline B, foreign influence.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge