



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 14-01749

Applicant for Security Clearance

Appearances

For Government, Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Mark S. Zaid, Esquire

APR 24 2017

Decision

MASON, Paul J., Administrative Judge:

Applicant has lived in the United States for 35 years. He has been a naturalized U.S. citizen since February 2004 and has owned his own home in the United States since May 1996. Given the stellar character evidence describing his longstanding U.S. ties, Applicant has successfully mitigated foreign influence concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on June 29, 2013. He provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM) on September 14, 2013 and another PSI on November 25, 2013. On February 5, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on March 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 16, 2016 and the hearing was held as scheduled on January 13, 2017. At the hearing, Government exhibits (GE 1, 3) were admitted into evidence without objection. The two PSIs within GE 2 were objected to because of a lack of authentication. (DOD Directive, E.3.1.20) I overruled the objection and admitted the entire exhibit, including interrogatory questions (dated January 31, 2014), and answers; and the two PSIs dated

September 13 2013, and November 25, 2013. The entire exhibit was notarized by Applicant on February 8, 2014. The two PSIs were admitted into evidence to develop a full record. Applicant testified and submitted 13 exhibits (AE A-M) that were admitted into evidence without objection. The last four exhibits on Applicant's exhibit list, which were originally labeled with same letters as the first four exhibits on the list, have been re-labeled as HE J, HE K, HE L, and HE M. DOHA received the transcript (Tr.) on January 24, 2017, and the record closed the same day.

Rulings on Procedure

On August 27, 2015, Department Counsel filed a memorandum requesting that I take administrative notice of facts about the Islamic Republics of Pakistan and Afghanistan. The administrative notice documents pertaining to Pakistan are entered into the record as Hearing exhibit (HE) 1. The administrative notice documents applying to Afghanistan are admitted into the record as HE 2. Administrative notice will be taken of matters that are generally known and not subject to reasonable dispute.

Findings of Fact

The SOR presents seven allegations under foreign influence (Guideline B). Applicant admitted some of the allegations and denied others with explanations. Applicant is 43 years old. He has been married since August 2008, and has a five-year-old daughter born in the United States. In May 1996, he received a bachelor's degree in computer science with a mathematics minor. In May 2006, he was awarded a master's degree in business administration. Since June 2014, Applicant has operated his own information technology (IT) business that provides services to the several agencies of the U.S. Government and also private companies. From January 2012 to June 2014, Applicant was employed as one of six managers on the management staff of his employer. He owned a consulting company from July 2006 to December 2011. He has held a security clearance since January 2010, and was investigated for a public trust position in July 2008. (GE 1 at 7-25, 59-60; AE J, Tr. 68-69, 72)

Applicant immigrated to the United States in January 1981 when he was seven years old. His parents came to this country on an investor's visa, and opened a carpet store. After living in a home that his parents had rented for 16 years, Applicant purchased the same home in May 1996, which is the same month he received his bachelor's degree. Since he moved to the United States, Applicant returned to Pakistan twice: once in 2005 because his mother wanted someone to escort her; and once in 2006 to accomplish his deceased father's wish to be buried in Pakistan next to his mother (Applicant's grandmother). (Answer to SOR; Tr. 81)

The first five SOR allegations relate to Applicant's family members. SOR ¶ 1.f applies to his wife's family member. The person identified in SOR ¶ 1.g is not related to Applicant's wife's family, but was considered part of her family when she lived in Afghanistan.

SOR ¶ 1.a - This cousin is a citizen and resident of Pakistan. Applicant's first contact was in 2011 when this cousin and Applicant had coffee while the cousin was in the United States working on a project related to this cousin's federal agency employment. The last contact Applicant had with this cousin was in 2013, when the cousin emailed him. Applicant did not know whether his cousin was still employed and had no intention to contact him. (GE 2; Answer to SOR; Tr. 73)

SOR ¶ 1.b - This cousin was formerly a citizen of Pakistan and a resident of Dubai, United Arab Emirates. He is now a Canadian citizen with permanent U.S.

resident status. This cousin is employed in the scaffolding business in Dubai. After Applicant's mother passed away in 2009, he contacted Applicant monthly by phone to check on the welfare of Applicant's family. The cousin's last contact was in August 2016, when he was in the United States visiting his wife's family. His cousin has never asked about Applicant's work. Applicant has no desire to rekindle contact with his cousin unless he moves to this country and becomes a U.S. citizen. (GE 2; answer to SOR; Tr. 75-77)

SOR ¶ 1.c - Two aunts are citizens and residents of Pakistan. Applicant's contact with his aunts (his mother's sisters) began following his mother's death in 2009, and prompted by a sense of obligation for her and Applicant's family. The contacts eventually stopped and Applicant has no intention to renew interaction in the future. (GE 2; answer to SOR; Tr. 77-78)

SOR ¶ 1.d - This uncle is a citizen and resident of Pakistan. He is a dentist. When Applicant's mother died in 2009, Applicant's recalled that most of his contact with this uncle (her brother) occurred. With the passage of time, this phone contact became less then stopped altogether. (GE 2; answer to SOR; Tr. 79-81)

SOR ¶ 1.e - This uncle is a retired Ambassador for the Pakistani government. Though he knows this uncle is his father's brother, Applicant does not know how long this uncle has been retired. The last time Applicant saw him was at a cousin's wedding in 2005, but Applicant did not speak to him. This uncle has no idea what Applicant does for a living. (GE 2; answer to SOR; Tr. 82-84)

SOR ¶ 1.f - Applicant's wife is the only member of his family to have contact with her aunt, a citizen and resident of Afghanistan. Applicant never had any type of contact with this aunt (the sister of Applicant's wife's father). His wife was not that close to the aunt, having last seen her in 2011 when Applicant's daughter was born. Applicant's wife noted that Applicant never spoke with this aunt because she does not speak English. (GE 2; answer to SOR; Tr. 47-48, 84-85)

SOR ¶ 1.g - Applicant's wife was the only member of his member who had contact with the family caretaker, a citizen and resident of Afghanistan. This contact occurred until she immigrated to the United States in 1999. Her family treated this caretaker as a family member because he was young and his mother had many children. After the caretaker re-established contact with Applicant's wife on social media four years ago, she agreed to terminate all contact at Applicant's request. (GE 2; answer to SOR; Tr. 44, 48-52)

None of Applicant's family members are affiliated with any foreign government. Neither Applicant nor his wife have any financial or property interests in a foreign country. The total amount of Applicant's U.S. assets, consisting of bank accounts, marketable securities, and real estate, is \$1,404,300. Applicant's annual income is \$230,000. The combined amount that Applicant and his wife have in their retirement accounts is \$143,702. Applicant's wife believes that the family financial statement is accurate. Applicant's credit report contains no delinquent accounts. (GE 1 at 40-41; GE 2 at 16; answer to SOR; AE B, L; Tr. 58-59;)

Character Evidence

Reference A, a friend, has known Applicant for several years. They serve on the development committee of a charitable organization that provides services for the poor and homeless. Applicant is an asset to the organization because of his IT background. (AE A)

Reference B, is a project manager for a defense contractor. Between 2007 and July 2014, he was Applicant's manager. Applicant's expertise is respected in the IT field. He is trustworthy and loyal. (AE B)

Reference C is a consultant who has contracted with several federal agencies over the years. He met Applicant in 2000 when he was director of operations. Subsequently, he recruited Applicant to another contractor company because of his expertise and outstanding work product. He recommends Applicant for a security clearance based on his honesty and trustworthiness. (AE C)

Reference D was Applicant's former employer during high school and college. A security clearance recommendation for Applicant is based on his dependability. (AE D)

Reference E is a friend and colleague. He hired Applicant in 2000. After he formed another company in 2011 or 2012, he hired Applicant as a principal consultant to handle a major project, and manage 30 employees and several subcontractors. He recommends Applicant for a security clearance. (AE E)

Reference F attended college with Applicant. He has become friends with Applicant and his family over the years. He is impressed with Applicant's ethics and his devotion to his family. (AE F)

Reference G, a friend who met Applicant in high school, has enjoyed 27 years of friendship. He has found Applicant to be trustworthy. (AE G)

Reference H (who also provided a character reference) testified that he met Applicant in college in 1991. After graduation in 1996, they began IT careers and stayed in touch. At Applicant's 2008 wedding, he met some of Applicant's foreign family members. They did not ask him any questions about his work. He did not believe they were connected to the Pakistani government or a part of a subversive organization. Applicant has never projected the attitude or impression that he had a preference for any foreign government over the U.S. Government. Reference H began working for Applicant's company in January 2015 because of Applicant's honesty, trustworthiness, and IT expertise. He occasionally participated in events sponsored by Applicant's charitable organization. He recommends Applicant for a security clearance. (AE H; Tr. 18-33)

Reference I (who also provided a character reference) retired from the military in 1998, after serving 24 years and several years as a contractor. He testified that he has held security clearances throughout his military and professional career. He has known Applicant since 2006 as neighbors. Their families socialize regularly. He admires Applicant's important contributions to his charity for the homeless. Because of his honesty, trustworthiness, good judgment, and dependability, Reference I recommends Applicant for a security clearance. (AE I; Tr. 33-41)

Applicant's wife, 34 years old, came to the United States in 1999 when she was 19 years old. She became a naturalized U.S. citizen in 2003. She married Applicant in May 2008. His wife's parents and two siblings are naturalized U.S. citizens. Her older brother is a patent attorney. Her younger sister is an accountant. Applicant is an exemplary husband who is always interacting in his daughter's school-related activities. The father of Applicant's wife is the only family member on either side of the family that has returned to Pakistan. His purpose for the trip is to visit his mother (Applicant's wife's grandmother). (Tr. 42-63)

Administrative Notice of the Islamic Republic of Pakistan

Pakistan is a parliamentary Islamic republic with significant internal problems caused by terrorist organizations concentrated in several locations within the country. As of 2014, parts of Pakistan's Federally Administered Tribal Areas, Khyber Pakhtunkhwa province, and Balochistan province were regarded as a safe haven for terrorist groups, including Al-Qa'ida, the Haqqani Network, Tehrik-e Taliban Pakistan, Lasahkar I Jhangvi, and the Afghan Taliban. These groups create ongoing security problems by targeting western interests, U.S. citizens, senior Pakistani officials, minority political groups, and religious entities. In September 2012, the United States officially declared the Haqqani Network a foreign terrorist organization. Operations in 2014 by the Pakistani military against some of the terror groups had with only marginal success.

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 are rampant.

Administrative Notice of the Islamic Republic of Afghanistan

Afghanistan, an Islamic Republic, has a democratically elected president with an unsettled political history. Following the withdrawal of the Soviet Union in 1989, fighting continued among various indigenous political and religious groups and militias before the Taliban emerged in 1998, in control of 90% of the country. In 2001, the U.S. military drove the Taliban out of power and a democratic election took place resulting in a new government being installed in October 2004.

In the years since the democratic election in 2004, various terrorist and insurgent organizations continue to cause problems throughout Afghanistan. Terrorist organizations target U.S. and Afghan interests through suicide operations, hostage taking, and bombings. The country has a poor human rights record. Corruption still plagues government operation. Because government officials are often connected to criminal operatives or networks, prosecution of these officials is problematic.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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 as to obtaining a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 expresses the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains three disqualifying conditions that may be pertinent in this case:

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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Family ties with family members living in a foreign country are not automatically disqualifying unless the ties create a heightened risk of foreign influence or a potential conflict of interest. A foreign government's human rights record and the existence of terrorism are relevant in evaluating the potential for coercion.

Applicant has two cousins, two aunts and two uncles, are citizens of Pakistan. The SOR ¶ 1.e uncle served as an ambassador for the Pakistani government. Applicant's wife's aunt and former family caretaker are citizens and residents of Afghanistan. Both countries have human rights problems aggravated by terrorist activities within their borders. Having these foreign family members in both countries create a heightened risk of foreign pressure and a conflict of interest that could arise from Applicant's desire to provide assistance to the foreign family members. AG ¶¶ 7(a), 7(b), and 7(d).

The potential mitigating conditions under AG ¶ 8 are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 United States;

(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 minimal, or the individual has such deep and long-lasting relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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

Applicant's contacts with his foreign family members are sufficiently minimal to warrant mitigation under AG ¶ 8(a). His parents are deceased. Applicant's last contact with the SOR ¶ 1.a cousin was through an email in 2013. His last contact with the SOR ¶ 1.b cousin after 2009 was a telephone call in August 2016. Applicant's SOR ¶ 1(c) aunts and his uncle (SOR ¶ 1(d) stopped contacting Applicant and he has no intention to renew contact with them. Applicant's uncle, the former Ambassador (SOR ¶ 1.e), is retired. There was no interaction when Applicant last saw him in 2005. Applicant has no desire to renew relationships with any foreign family member. AG ¶ 8(a) applies.

Applicant left Pakistan for the United States in 1981, when he was 7 years old. He has only visited the country twice since then. He has no financial interests, bank accounts or real property in the country or Afghanistan. His financial assets in the United States total more than \$1,400,000. The relationships he has developed in the United States since 1981 are very credible. He and his wife have been U.S. citizens for 12 years. His daughter was born in the United States. His wife's parents and two siblings are naturalized U.S. citizens. The longstanding relationships he has nurtured in the United States demonstrate that he will not fall prey to foreign influence. In view of the foregoing ties to this country, if a conflict of interest were to arise, Applicant would choose U.S. interests. AG ¶ 8(b) applies.

Applicant's communication with the listed family members identified at SOR ¶¶ 1.a through 1.e has been less than occasional. The most recent contact with any of his family members was with the SOR ¶ 1(b) cousin in August 2016, with the previous contact occurring in 2009. Judging by the totality of the communication and contacts, I conclude that the contacts were so casual and infrequent that there is little likelihood for a risk of foreign influence or exploitation. AG ¶ 8(c) applies.

Whole-Person Concept

In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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 on careful

consideration of the specific disqualifying and mitigating conditions in light of all the circumstances surrounding this case.

Applicant immigrated to the United States in 1981. He has lived in this country for 35 years. His last trip to Pakistan was in 2006. He married his wife, a U.S. citizen, in 2008, and has a young daughter who is also a U.S. citizen. He has owned his own home since 1996. All of Applicant's financial assets are in the United States. He received his bachelor's and master's degrees from prestigious U.S. academic institutions. In addition to portraying Applicant as a good husband and a devoted father, the nine character references describe him as a dependable, honest, security conscious person and friend, who has developed lasting relationships and bonds in the United States. Applicant's commitment to improving the plight of the homeless weighs heavily in his favor. Judging by the totality of the evidence, and in light of the general factors of the whole-person concept, Applicant has mitigated the security concerns based on the foreign preference guideline.

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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraphs 1.a-1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.



Paul J. Mason
Administrative Judge