



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-02545
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

06/20/2017

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on April 8, 2015. On November 10, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. The action was initially 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) implemented within the Department of Defense on September 1, 2006. On June 8, 2017, the AGs were updated and cancelled the AGs effective September 2006. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On November 30, 2016, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 12, 2017. The case was assigned to me on that same date. On May 16, 2017, a Notice of Hearing was issued, scheduling the hearing for May 31, 2017. The hearing was held as scheduled. During the hearing, the Government offered one exhibit, which was admitted without objection as Government (Gov) Exhibit 1. Applicant offered 18 exhibits, which were admitted as Applicant Exhibits (AE) A - R, without objection. The

Government requested administrative notice be taken of certain facts regarding the country of Pakistan. The administrative notice document was marked as Administrative Notice Document (Admin Not) 1. Applicant did not object to the administrative notice documents. The transcript was received on June 7, 2017. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice – Pakistan

The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute.

Pakistan continues to have serious human rights problems including extrajudicial and targeted killings, disappearances, torture, lack of rule of law (including lack of due process, poor implementation and enforcement of laws, frequent mob violence and vigilante justice, and sectarian violence). Government and police corruption as well as rape, domestic violence, sexual harassment, honor crimes, and discrimination against women and girls remain serious problems. Lack of government accountability is a problem. Abuses often went unpunished fostering a culture of impunity. Authorities seldom punish government officials for human rights violations. (Admin Not 1)

In 2015, an assortment of terrorist groups attempted to hide or operate from portions of Pakistan's Federally Administered Tribal Areas, a mountainous region along Pakistan's northwest border with Afghanistan. Pakistan launched military operations to eradicate terrorist safe havens, although their impact was uneven. As of February 2015, the U.S. State Department warned U.S. citizens to defer all non-essential travel to Pakistan, because the presence of several foreign and indigenous terrorist groups poses a potential danger to U.S. citizens throughout Pakistan. Further concerns about Pakistan include the potential for weapons of mass destruction trafficking, and proliferation. (Admin Not 1)

Findings of Fact

In his answer to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a -1.b, and denies the allegation in SOR ¶ 1.c.

Applicant is a 34-year-old employee of a Department of Defense contractor who is applying for a security clearance for the first time. He has been with his employer since February 2015. His highest level of education is a bachelor's degree. He is married and has two children, ages seven and five. (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

Applicant was born and raised in Pakistan. He has seven siblings. His father passed away when he was 13. Upon graduating high school, he moved away from home and attended a university in Pakistan. Applicant met his wife in 2007. She is a United States citizen. They married that same year. In 2009, Applicant was awarded a

Bachelor's degree in Computer Science with honors. His wife applied to sponsor Applicant as a permanent resident in the United States. (AE B)

In December 2009, he and his wife moved to the United States after he received his permanent resident status. When he arrived in the United States, he pursued further certifications in his line of work in order to provide for his family. He also worked several jobs while pursuing his certifications. He and his wife have two children who were born and reside in the United States. (Tr. 19; AE B)

Applicant became a U.S. citizen in March 2013. He applied for a U.S. passport in July 2013. It will not expire until July 2023. Applicant surrendered his Pakistani passport to his facility security officer (FSO) in 2013. (AE B – AE E) From September 2013 to February 2015, Applicant worked for a federal agency as a contractor. In February 2015, he accepted a job with his current employer. (Gov 1; AE B) Applicant does not own any property or financial accounts in Pakistan. All of his assets are in the United States. He has never worked in Pakistan and never served in the Pakistani military. (Tr. 25, 32, 37-38)

The issues in the SOR, allege Applicant's mother is a citizen of Pakistan, and his four brothers, and three sisters are citizens and residents of Pakistan. It also alleges that Applicant maintains close and continuing contact with a friend who is a citizen and resident of Pakistan. Applicant's mother is a permanent resident of the United States. She lives with Applicant and his family. She has lived in the United States over the past two years. Once she is eligible, she hopes to apply for U.S. citizenship. (Tr. 20-21)

Five of Applicant's siblings in Pakistan are in the process of applying for permanent resident status. His mother is the sponsor. Three of his brothers, ages 21, 22, and 24, who are currently college students and two sisters, ages 27 and 28, who have college degrees, but are unemployed, are being sponsored. Applicant also has a brother who is married and resides in Pakistan. Applicant has not contacted this brother for two years. Applicant also has a sister who is married and resides in Pakistan. The last time he contacted her was 2 and a half years ago. Applicant testified that his married brother and sister have their own lives. None of his siblings serve in the Pakistani military or work for the government. (Tr. 21-25; AE N - R)

Applicant was close friends with his sister's father-in-law who is a citizen of and resides in Afghanistan. After moving to the United States, he has had no contact with him. Currently, he has no close friends who are citizens of and reside in Pakistan, (Tr. 39, 38-39) Applicant's in-laws are United States citizens and live in the United States near Applicant and his family. His wife has no close relatives that live outside the United States. (Tr. 39)

Applicant provided several letters of recommendation. The vice principal of his children's school states that Applicant is respectful and is very involved in the education of his children. A senior information analyst, who serves as Applicant's testing team lead since February 2015, states Applicant works well with the team and completes his assignments in a timely manner. Applicant's supervisor from his previous job notes Applicant is "a very conscientious person that strives to do his best." He states that

Applicant was a top performer and is honest. His attendance and punctuality were excellent. He was preparing to give Applicant more responsibility, but Applicant left the company for a better opportunity. He recommends Applicant for a security clearance. Applicant's landlord and his father-in-law said similar favorable things about Applicant. Two former coworkers also provided favorable letters on Applicant's behalf. (AE A)

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 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(a), 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 for national security eligibility will be resolved in favor of the 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 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 the applicant may deliberately or inadvertently fail to protect or 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 (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

GUIDELINE B: Foreign Influence

AG ¶ 6 explains the Government’s concern under Foreign Influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying. They include:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;

(e) shared 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;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject

the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has seven siblings who are citizens of and reside in Pakistan. His relationship with his family creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because Pakistan is a known haven for terrorist groups and has serious human rights problems. Applicant's contacts with his family in Pakistan also creates a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information.

With regard to the allegation in SOR ¶ 1(c), I find there is no longer an issue because Applicant has had no contact with his friend in Afghanistan since moving to the United States eight years ago.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b) as a result of Applicant's admissions and evidence presented. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. They include:

(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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group,

government, or country is so minimal, or the individual has such deep and longstanding 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

I find AG ¶ 8(a) and AG ¶ 8(b) apply to Applicant's case. It is clear that Applicant has ties of affection and obligation to his siblings who reside in Pakistan. However, it is unlikely Applicant will have to choose between the interests of his siblings and the interests of the United States. Applicant's family members are not associated or affiliated with the Pakistani government. His brothers are students. His sisters do not work and live at home. He is not close with his siblings who are married and have families of their own. The family member with whom he is closest is his mother. His mother is now a permanent resident of the United States. She has lived in the United States with Applicant and his family for over two years. Applicant's immediate family members, his wife and two children are citizens of reside in the United States. Applicant lives in the United States and all of his assets are in the United States.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant has lived in the United States for eight years. He became a U.S. citizen in 2013. His wife was born and raised in the United States. His children were born and are being raised in the United States. All of his professional life has been in the United States. All of his financial assets are located in the United States. Aside from his siblings, all of Applicant's ties are in the United States. His closest ties, his wife, children and mother live in the United States. His in-laws are citizens of and reside in the United States. Applicant can be expected to resolve any conflict in favor of U.S. interests. Security concerns under Foreign Influence are mitigated.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 considered Applicant moved to the United States in 2009 with his wife, a United States citizen, after graduating college. When he first moved to the United States, he worked several low-paying jobs while achieving certification training in order to succeed in his career. His professional life started in the United States. He became a U.S. citizen in 2013. His two children were born in the United States. Applicant and his family have built a life in the United States.

Applicant's mother resides with Applicant and is a permanent resident of the United States. She has lived in the United States for the past two years and intends to apply for U.S. citizenship. She is sponsoring five of Applicant's siblings to become permanent residents of the United States. Applicant is not as close to his two siblings who intend to remain in Pakistan. They are married and have their own lives. He talks to them every few years. Applicant surrendered his Pakistani passport to his FSO.

Several of Applicant's supervisors and coworkers have attested to his good character and work ethic. They recommend him for a security clearance. Although Applicant has siblings residing in Pakistan, his immediate family members and all of his investments are located in the United States. Applicant's longstanding ties in the United States indicate that Applicant can be expected to resolve any conflict in favor of U.S. interests.

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:

FOR APPLICANT

Subparagraphs 1.a -1.c:

For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge