



ISCR Case No. 14-05160

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant's two children are U.S. citizens, and his wife and mother are permanent U.S. residents. All of them have returned to the United States from Pakistan, thereby mitigating any heightened risk of coercion or pressure from the government of Pakistan. Given Applicant's deep and longstanding relationships in the United States, he can be expected to resolve any potential conflict of interest that may arise stemming from his remaining relatives, who are citizens and residents of Pakistan, in favor of the U.S. interest. Clearance is granted.

Statement of the Case

On September 18, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on March 11, 2016, admitting the allegations. He initially requested a decision on the administrative record without a hearing, and later switched his preference to a hearing. On October 19, 2016, I received the case assignment. DOD issued a notice of hearing on November 8, 2016, scheduling the hearing for December 5, 2016. I held the hearing as scheduled. During the hearing, I received three Government exhibits, marked as Government Exhibits (GE) 1 through 3, and considered Applicant's testimony. Also, I took administrative notice, at Department Counsel's request, of the adjudicative facts set forth in six documents, marked as Hearing Exhibits (HE) I through VI. At the end of the hearing, I left the record open, at Applicant's request, to allow him the opportunity to submit exhibits. Within the time allotted, Applicant submitted nine exhibits, marked and received as Applicant's Exhibits (AE) A through AE I. DOHA received the hearing transcript (Tr.) on December 13, 2016.

Findings of Fact

Applicant is a 28-year-old married man with two children, ages three and two. He earned a bachelor's degree in 2012, majoring in information systems and operations systems management. (Tr. 29) Currently, Applicant works for a federal government contractor, managing information technology related to human resources. (Tr. 17)

Applicant was born in Pakistan. In 2000, at age 11, he immigrated to the United States with his father and brother. (Tr. 28) His father did not bring the remainder of the family, Applicant's mother and sister, because he was poor and could not afford to bring everyone. (Tr. 21-22) When Applicant first immigrated to the United States, he could not speak English. (Tr. 29) His father would frequently take lengthy trips to Pakistan, lasting as long as a month at a time, leaving Applicant and his brother to take care of themselves. (Tr. 30) By the time Applicant was in 11th grade, he was employed full time at a fast-food restaurant, working weekend overnight shifts, while attending school. (Tr. 31) His younger brother started working shortly thereafter. Their father would take all of the money that they earned. (Tr. 31)

Ultimately, Applicant's high school counselor became suspicious and reported Applicant's situation to the local social services agency. (Tr. 29) After a social worker visited the home and interviewed Applicant and his brother, they were placed in foster care. (Tr. 30) Applicant lived with a foster family from age 16 to 18, then moved into a semi-independent living program where he received subsidized housing. (Tr. 33) After graduating from high school, Applicant attended college. He financed his college education with a combination of federal grants and income from work. (Tr. 33-34) Applicant became a naturalized U.S. citizen in 2009. (Tr. 21)

Applicant's wife, a homemaker, is a citizen of Pakistan. She has permanent U.S. resident status. (AE C) Applicant and his wife married in July 2011. Because Applicant was not financially secure when they married, they decided that she should remain in

Pakistan, where the cost of living is cheaper, and live with his mother.¹ Both of their children, U.S. citizens, were born in Pakistan. Applicant's family joined him in the United States in August 2015.

In April 2016, Applicant lost the job that he held immediately before his current job. Because he knew that he was going to struggle to make ends meet while unemployed, he opted for his family to return to Pakistan. As of the hearing date, Applicant was planning to arrange for the return of his family, including his mother, to the United States. Per their airline reservations, they are scheduled to return on January 31, 2017. (AE I) Each of Applicant's family members, including his mother, have identification cards issued by their state of residence. (AE A) Also, Applicant's mother has permanent U.S. residence status. (AE B)

When Applicant's family lived in Pakistan, he visited them approximately once per year, and he kept in frequent contact with them. (Tr. 24) Also, he provided between \$300 and \$500 per month in support. (Answer at 5) Now that they have returned to the United States since the hearing, Applicant has no intention of returning to Pakistan. (AE G at 1)

Applicant has not been in contact with his father since 2008 when Applicant entered foster care. He does not know his whereabouts. He remains in touch with his foster parents, whom he considers "very great people." (Tr. 34) Applicant's sister remains in Pakistan. They do not stay in touch frequently. (Tr. 19) Applicant's parents-in-law are citizens and residents of Pakistan. They are farmers. Applicant does not speak with them often.

Administrative Notice

Although Pakistan is a parliamentary federal republic, its human rights record remains poor. (HE VI at 1-2) Although Pakistan remains a critical counterterrorism partner, several terrorist groups continue to operate in parts of Pakistan with impunity, and the U.S. Department of State considers parts of Pakistan to be terrorist safe havens. (HE II at 2) In April 2016, the U.S. Department of State renewed a warning to U.S. citizens to defer all nonessential travel to Pakistan, as the presence of several terrorist groups posed a potential danger to U.S. citizens through Pakistan. (HE 1)

In May 2011, U.S. forces killed Osama bin Laden, mastermind of the 9/11 attacks and numerous other terrorist attacks around the world. He had been living in hiding in an affluent suburb of Islamabad, Pakistan's capital, in a home eight times larger than any homes in the community, reinforced by extraordinary security measures including 12 to 18 foot walls topped with barbed wire and two security gates. (HE V at 5)

¹Applicant's mother also has permanent U.S. residence status.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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. Under the whole-person concept, 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.

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this 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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest" (AG

¶ 6). Moreover, “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” (*Id.*).

Pakistan is a haven for extremist, anti-American groups, including Al Qa’eda, which masterminded the 9/11 attack. Also, the U.S. Department of State continues to warn U.S. citizens not to travel there. These concerns raise the issue of whether AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” applies to Applicant’s relationship with his family members who are citizens and residents of Pakistan. Applicant has had no contact with his father in nearly ten years and does not know his whereabouts. AG ¶ 7(a) is inapplicable to Applicant’s father because they have no relationship. As Applicant’s immediate family and mother have returned to the United States since the hearing, AG ¶ 7(a) no longer applies to them.

Applicant’s wife and mother’s residence at his home raised the issue of whether AG ¶ 7(d), “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion,” applies. Although the relationship between the United States and Pakistan has, at times, been tenuous over the years, the countries remain critical partners. Under these circumstances, it is unlikely that the government of Pakistan would seek to exploit one of its citizens living in the United States, such as Applicant’s wife and mother. AG ¶ 7(d), “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion,” does not apply.

As for Applicant’s sister and parents in-law, all citizens and residents of Pakistan, the disqualifying condition under AG ¶ 7(a), as set forth above, is applicable. The potential vulnerability to coercion, inducement, or duress posed by Applicant’s sister is mitigated by their rare contact. AG ¶ 8(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,” applies. Applicant’s contact with his parents in-law is similarly infrequent. However, there is a presumption that one’s relationship with in-laws is not casual. Applicant is thoroughly immersed in U.S. culture, having spent half of his childhood here. When he first immigrated to the United States at 11 years old, he spoke no English. By the time he was a teenager, he had no adult on which to depend, as his father was neglectful. Nevertheless, by the time he was 16, he had learned English, was attending high school, working full time, and generally supporting himself until he was moved into foster care. Notwithstanding these impediments, he continued to succeed, completing college and obtaining gainful employment. His path to success was facilitated by his foster parents, with whom he is still in contact, together with a network of social service resources that enabled him to afford housing and a college education. Given the relationships that he developed while utilizing these resources over the years, I conclude

that AG ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” applies to Applicant’s relationship with his in-laws remaining in Pakistan. Considering the application of these mitigating conditions, together with the whole-person factors set forth in AG ¶ 2(a), I conclude Applicant has mitigated the security concern.

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
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Subparagraph 1.a - 1.g:	For Applicant
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Conclusion

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

MARC E. CURRY
Administrative Judge