



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



In the matter of:)
)
) ISCR Case No. 15-01713
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: Martin Hogan, Esq.

10/25/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On September 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).¹ The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2016. A notice of hearing was issued on May 17, 2016, scheduling the hearing for June 9, 2016. The hearing was rescheduled for good cause and occurred on August 25, 2016. Government Exhibit (GX) 1 was admitted into evidence without objection. Applicant

¹At the hearing, the Government moved to amend the SOR by withdrawing Guideline C-Foreign Preference. The Motion was accepted and Guideline C was withdrawn.

testified, presented the testimony of one witness, and submitted Applicant Exhibits (AX) A through S, which were admitted without objection. The transcript was received on September 2, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Pakistan. The request and the attached documents are included in the record as HE I. Applicant presented documents concerning Pakistan, which are marked as AX O-S. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.b through 1.e, with explanation, and denied SOR allegation 1.a.

Applicant was born in Pakistan in February 1982. (Tr. 27) He immigrated to the United States when he was 15 years of age, where he attended high school and university. He received his undergraduate degree in 2008 from an American university. (AX E and F) He did not serve in the Pakistan military. Applicant became a naturalized citizen in 2004. (GX 1) Applicant has a United States passport. (AX C) Before his current position, Applicant worked for another contractor. Since March 2011, Applicant has been employed with his current employer, as a database administrator. (Tr. 20) He completed a security clearance application on November 14, 2011. This is his first request for a security clearance with the DOD.

The SOR alleges foreign influence security concerns because of Applicant's spouse, mother, sister, mother-in-law, and father-in-law.

In 2010, Applicant married his wife who was a citizen and resident of Pakistan. However, she is now a U.S. citizen. She was naturalized on August 18, 2015. She lives with Applicant and their two-year-old daughter. They were married in Pakistan. That was Applicant's only trip to Pakistan since he has lived in the United States. Applicant's wife has a U.S. passport. (AX K)

Applicant's mother is a Pakistani citizen who lives in the United States. She has been in the process of obtaining U.S. citizenship, but she has had some challenges. When she last tried in June 2015, she had recently had mouth surgery for cancer. She has a language barrier that has prevented her from success. She has now become a naturalized U.S. citizen in 2016. (Tr. 70) Applicant's mother arrived in the United States in 1999 or 2000. Applicant's father arrived in the United States in 1996 and is a naturalized U.S. citizen. (AX G)

Applicant has one sister who was a Pakistani citizen, but she resides in the United States. At the time of the issuance of the SOR, she was in the process of

gaining U.S. citizenship, but she was not fully successful on her civics test. She is now a U.S. citizen. (Tr.75) She has no ties to the government of Pakistan.

Applicant's mother-in-law and father-in-law are both Pakistani citizens and residents of Pakistan. They have no contact with the government of Pakistan or its military. Applicant's wife talks with them on the phone once a week. (Tr. 80) Applicant has rare contact with them. They want to come to the United States, but the process is not complete. Applicant submitted a Petition for Alien Relative for his father-in-law and mother-in-law. (AX M and N) They want to leave Pakistan and live with their daughter and son-in-law and granddaughter. (Tr. 60) His mother-in-law came to the United States in 2014 for the birth of her granddaughter. (Tr. 68)

Applicant's uncle immigrated to the United States in the late 1970's. Applicant's two elder brothers, an uncle and one elder sister came to the United States before Applicant arrived. They are all U.S. citizens living and working in the United States. (Tr. 31) They all possess a U.S. passport. In total, Applicant has five brothers, and two sisters who live in the United States. They have no ties to the government of Pakistan.

Applicant's colleague, who has held a security clearance, testified that he has known him for about three years. He described Applicant as devoted to his job. Applicant is a person who exceeds in his work tasks and helps and mentors people. (Tr.22) He is essential to his team and the company places great trust in him. He has provided guidance to senior staff members. (Tr. 23)

Applicant submitted a letter from his Facility Security Officer (FSO) that confirms Applicant has surrendered his passport from Pakistan and his National Identity Card. (AX A) He used his U.S. passport when he traveled in 2010.

In his answer to the SOR, Applicant emphasized that "he is an American patriot. I am proud to be a citizen of the greatest nation and have no interest in Pakistan. " He noted that one of his uncles was in the twin tower in New York on September 11, 2001, but he escaped with his life. He emphasized that he certainly has no sympathy with any terrorists in the country.

Applicant was credible when he stated that the United States is his home. This is where he wants to live for the rest of his life with his wife and family. (Tr. 62) He has been working in the defense industry for more than six years. He enjoys his work and wants to provide a service to the U.S. Government. He has financial assets in the United States. He has no property or financial interests in Pakistan. (Tr. 65)

Administrative Notice

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan. Despite this support, members of the Taliban are known to be in

the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Pakistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al Qaida operate in Pakistan, and in some instances elements of the Pakistan government may be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 it was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Pakistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghanistan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al Qaida exploits the permissive operating environment to support the Afghanistan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Pakistan Taliban and other extremist 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. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistan civilians and security personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistan Government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail, phones, and electronic messages without the requisite court approval. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut off military aid to Pakistan for several years.

After September 11, 2001, Pakistan became allied with the United States in counterterrorism. Pakistan committed to elimination of terrorist camps on the Afghanistan-Pakistan border and sent thousands of troops to the region and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency

efforts and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

On May 1, 2011, U.S. special operations personnel raided a large compound in Pakistan and killed Osama bin Laden, the leader of al Qaida. The raid raised concerns that the Pakistan government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

As of August 2014, the U.S. State Department continued to warn U.S. citizens to defer all non-essential travel to Pakistan, as the presence of several foreign and indigenous terrorist groups poses a potential danger to U.S. citizens throughout Pakistan.

In January 2015, Secretary of State for the United States Department of State, John Kerry visited Pakistan and the visit underscored the long-term cooperation between the United States and Pakistan and highlighted areas of ongoing activity, including, military exchange and training.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b). A third disqualifying condition may be raised by 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.

Although the relationship between the United States and Pakistan has, at times, been tenuous over the years, the countries remain partners, cooperating in a broad range of areas including counterterrorism and economic development. Under these circumstances, it is unlikely that the government of Pakistan would seek to exploit one its citizens living in the United States, such as Applicant’s wife. AG 7 (d)

Applicant’s immediate family members are U.S. citizens living in the United States. However, Applicant’s in-laws are citizens and residents of Pakistan. He does not have much contact with them, but his wife phones them weekly and his mother-in-law visited the United States when his daughter was born.

Security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his in-laws. This creates a heightened risk of foreign exploitation. Based on this evidence, AG 7(a) and 7(b) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States,

especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, 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 government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified or economic information from or through Applicant, or his in-laws living in Pakistan, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Pakistan has a significant problem with terrorism.

Security concerns under this guideline can be mitigated by showing that "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 U.S." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG ¶ 8(b) can mitigate concerns when "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." AG ¶ 8(c) can mitigate if "contact of 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."

AG ¶ 8(a) has applicability. Applicant's parents, wife, child, and sibling reside in the United States. He does not keep in touch with his in-laws regularly and they are in the process of coming to the United States, but his wife may speak to them. He has shown mitigation under AG ¶ 8(a), and Applicant met his burden of showing there is "little likelihood that [his relationships with relatives living in Pakistan] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. He has lived in the United States since 1996. He married his spouse and has a child who is a U.S. citizen. His parents are now living in the United States with Applicant and are U.S. citizens. He is a family man who wants to provide for his family in the United States. When Applicant took an oath and swore allegiance to the United States when he became a naturalized U.S. citizen, he

manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his wife's family living in Pakistan. He rarely communicates with them in Pakistan. Moreover, there is no evidence that terrorists, criminals, the Pakistan government or military, or those conducting espionage have approached or threatened Applicant, or his family members. As such, there is a reduced possibility that either Applicant or his in-laws living in Pakistan would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his in-laws living in Pakistan is from terrorists and other lawless elements and not the Pakistan Government.

In sum, Applicant's ties with his immediate family are significant. He went to Pakistan in 2010 for his marriage. Applicant's connections to the United States are stronger. He has no desire to return to Pakistan. He is committed to his personal and professional life in the United States. His wife and child live with him in the United States. His financial assets are in the United States. There is substantial mitigation in this case. Applicant spoke about his undivided loyalty to the United States. His connections to the United States heavily outweigh his connections to his in-laws in Pakistan. He has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated under Guideline B.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is a naturalized U.S. citizen. He is an educated man, who lives with his wife, child and parents in the United States. His financial assets are in the United States. Applicant has strong personal and professional ties to the United States. He is well respected by his peers. His father and uncle have been here a long time. He can be expected to resolve any issues in favor of the United States.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation and dangers there. The country is dangerous because of violence from terrorists and other lawless elements. Terrorists continue to threaten Pakistan, the interests of the United States, and those who cooperate and assist the United States. Pakistan does not fully comply with the rule of law or protect civil liberties in many instances. Still, the United States and Pakistan remain allies in the war on terrorism. Pakistan and the United States have close relationships in diplomacy and trade. They also have profound policy disputes.

However, his in-laws have no knowledge of Applicant's work. More importantly, his primary duty is to his own wife and his child who are U.S. citizens. He has no intention of returning to Pakistan, and he will seek advice to resolve any issues that may arise in the future with the help of his employer. For all these reasons, Applicant has mitigated the security concerns under 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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Subparagraph 2, Guideline C:	WITHDRAWN

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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge

