



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-05624

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

02/13/2017

Decision

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns about Applicant's personal conduct and by his ties to relatives who are citizens of and reside in Pakistan. Applicant's request for a security clearance is granted.

Statement of the Case

On November 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

On March 4, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for foreign influence (Guideline B) and personal conduct (Guideline E). Applicant timely responded

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

to the SOR (Answer) and requested a decision based on the written record in lieu of a hearing. However, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) timely requested a hearing, and the case was assigned to me on June 22, 2016.

I convened a hearing in this matter on August 10, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 5.³ Applicant testified in his own behalf and submitted Applicant's Exhibits (Ax.) A⁴ and B. All exhibits were admitted without objection. Additionally, Department Counsel requested that I take administrative notice of certain facts about the Islamic Republic of Pakistan (Pakistan) that might be germane to this adjudication. The Government's request is supported by a legal memorandum and six attached documents included in the record as Hearing Exhibit (Hx.) 2. A transcript of the hearing (Tr.) was received on August 18, 2016.

Findings of Fact

Under Guideline E, the Government alleged that in October 2014, Applicant was fired from his job after violating company policy regarding foreign travel (SOR 1.a). Applicant admitted this allegation and provided additional information about that event. (Answer)

Under Guideline B, it was alleged that Applicant's wife is a citizen of Pakistan living in the United States (SOR 2.a); that three of Applicant's brothers are citizens and residents of Pakistan (SOR 2.b); that one of Applicant's sisters is a Pakistani citizen living in Pakistan (SOR 2.c); that one of Applicant's brothers, a U.S. citizen, lives and works in China (SOR 2.d); and that Applicant's four brothers-in-law (SOR 2.e) and four sisters-in-law (SOR 2.f) are citizens and residents of Pakistan.

The Government's information (Gx. 1 - 5) supports all of the SOR allegations. In response to the SOR, Applicant refuted SOR 1.a by establishing that his wife was naturalized as a U.S. citizen in 2013. As to SOR 2.d, Applicant's response to the SOR and his testimony at the hearing established that this brother has been living and doing business in the United States since early 2015. (Answer; Tr. 60 - 62) SOR 2.a and 2.d are resolved for the Applicant.

I have reviewed the pleadings and the exhibits presented by both parties and make the following additional findings of fact.

Applicant is 46 years old and has worked as a linguist for defense contractors since April 2009. He was born and raised in Pakistan, immigrating to the United States in July 1991 at the age of 20. He received permanent resident status in 1997 and applied for U.S. citizenship. He was naturalized as a U.S. citizen in March 2004. Applicant's wife of 11 years also is originally from Pakistan. She was naturalized as a U.S. citizen in April 2013. Together they have two children less than ten years old, both born in the United States. Through his defense contracting employment, Applicant has held a security clearance since 2009. (Answer; Gx. 1 and 2; Tr. 7 - 9)

³ Included as Hearing Exhibit (Hx.) 1 is a list identifying Gx. 1 - 5.

⁴ Ax. A is not physically included in the case file. Applicant proffered as Ax. A two "command coins" given to Applicant by military commanders for whom he worked overseas. Rather than take the coins from him, they are described to the satisfaction of both parties at Tr. 34 - 36. I note the significance of these coins as a sincere expression of gratitude for and recognition of a job well done.

Since February 2016, Applicant has been employed by Company A, for whom he previously worked from November 2012 until October 2014. During that time, and during similar employment for Company B between April 2009 and July 2012, Applicant was deployed overseas in direct support of U.S. military missions, including special operations efforts. Most of the time while he was so employed, Applicant lived and worked in overseas theaters of operation while his family remained in the United States. His employers periodically gave him leave to come home for a few weeks at a time. During one such leave period in March 2014, Applicant and his wife received word that her father in Pakistan was seriously ill. Without notifying his employer, Applicant and his wife immediately traveled to Pakistan, where they visited her father between March 20 and March 29, before returning to the United States to finish his vacation and resume tending to matters at home. He then redeployed back to his overseas job site. Applicant's father-in-law died on April 6, 2014, but Applicant and his wife did not return to Pakistan for the funeral. Both of Applicant's parents and his wife's parents are now deceased. Applicant and his wife have not returned to Pakistan since March 2014 and they do not intend to ever travel there in the future. (Answer; Gx. 4; Ax. B; Tr. 44, 50 - 56)

Applicant's employer requires its employees to advise them of any plans for foreign travel and to seek permission for such travel. Applicant averred that his previous employer was not as stringent about foreign travel and that, because his March 2014 trip was brief, he did not feel compelled to report his travel to Company A. In October 2014, Applicant was interviewed at his job site as part of the background investigation initiated by his November 2012 EQIP. During that interview, his U.S. passport was examined and it was learned he had traveled to Pakistan. When his employer learned this, Applicant was terminated. Applicant now understands he violated his company's policy and takes full responsibility for his conduct. (Answer; Gx. 4; Gx. 5; Tr. 76 - 78)

After Applicant was fired, he found work as a linguist with defense contractors at military installations in the United States. He was rehired by Company A for work as a linguist that will not require that he travel abroad. (Ax. B; Tr. 42 - 43, 52, 56 - 57)

For his work as a linguist embedded with U.S. combat units overseas, Applicant was recognized several times as reliable and trustworthy. His military superiors regarded him as committed to a mission that was often dangerous and recognized Applicant as one who could be entrusted with sensitive information, disclosure of which might have perilous consequences for the military personnel whom he supported. One commander referred to Applicant's performance as exemplary and regarded Applicant as an invaluable asset and a "force multiplier" in the field. (Ax. B; Tr. 34 - 40)

In addition to Applicant's wife and a brother referred to in SOR 2.d, Applicant also has three brothers and two sisters who are citizens and residents of Pakistan. He also has three sisters-in-law who are his brothers' wives. Two brothers are retired from engineering and construction careers. The other is a self-employed driver. Both sisters are housewives. Applicant's wife has four brothers who are citizens and residents of Pakistan. Two are in the vegetable wholesale business. Another brother-in-law is a lawyer in private practice. It is not clear from the record what the fourth brother does for a living. All of Applicant's brothers' wives do not work outside of the home. The same is true on Applicant's wife's side of the family. Applicant also has another sister who left Pakistan almost 40 years ago and lives with her husband in the United Kingdom. She is a citizen of the United Kingdom. (Answer; Gx. 1; Gx. 3; Tr. 62 - 67, 79)

Applicant has very little contact with his or his wife's siblings. He is closest to his sister in the United Kingdom but still only talks to her a few times each year. As to his own family, Applicant only has contact with a few of them during two annual holidays. As to the brother referred to in SOR 2.d, he and Applicant had a falling out over his brother's unwillingness to help Applicant during difficult financial times after Applicant previously had helped his brother. Despite the fact that this brother lives in a neighboring state in the United States, Applicant has not talked to him in almost two years. When Applicant went to Pakistan in 2014, he did not contact anyone from his side of the family. None of Applicant's or his wife's family are employed by or otherwise associated with the Pakistani government. One of the jobs Applicant has had in the United States was as a taxi driver. That is what he has told all of his relatives in Pakistan that he does for a living. (Gx. 3; Tr. 43 - 45, 60 - 62, 72 - 74)

In response to Department Counsel's request, I take administrative notice of the following facts contained in Hx. 2:

Most of Pakistan's western border abuts Afghanistan. To the southwest, Pakistan shares a border with Iran. Extensive terror networks operate along the border with Afghanistan in the Federally Administered Tribal Areas (FATA) along the central Afghanistan border, in the Khyber Pass region in northwest Pakistan, and in Balochistan Province in southwest Pakistan. Chief among these terror networks are the Taliban, the Haqqani Network, and al-Qaeda. They operate in many cases without meaningful interference from the Pakistani government, and their activities consist of anti-U.S. and anti-coalition military operations across the border into Afghanistan. The FATA, and other areas mentioned above, provide safe havens from which terrorists have been able to plan and launch attacks on U.S. and coalition troops and interests in Afghanistan. Bombings and other acts of terror also have been reported throughout Pakistan, but the main focus of terrorist activity in Pakistan consists of attacks in urban areas, such as the capital city of Islamabad. Because of this information, the U.S. Department of State has issued numerous travel advisories and warnings to U.S. citizens considering traveling to Pakistan.

The United States and Pakistan have had diplomatic relations since Pakistan obtained its independence from Great Britain in 1947. The countries' interests have been in general agreement for much of that time. Since 2001, Pakistan has helped the U.S. in its global war on terrorism and has helped capture hundreds of Taliban and Al-Qaeda personnel. However, as noted, efforts to deny areas adjacent to Afghanistan as safe havens for terrorist organization have not been as effective as the U.S. would like. Another issue related to terrorist activity in Pakistan is the fact that Pakistani government and military entities have committed numerous human rights violations in the name of counter-terror operations and investigations. Extra-judicial killings, arbitrary arrests without access to due process, and other human rights problems are commonplace.

Finally, I note⁵ that the Islamic Republic of Pakistan is a federal republic made up of an executive, a legislative, and a judicial branch, whose powers and limitations are contained in a national constitution. The legislature is comprised of representatives in a bicameral parliament chosen through open elections from a multi-party system. A president and prime minister, and appointed cabinet members make up the head of the

⁵ This information was not contained in Hx. 2. I obtained this information *sua sponte* from the CIA World Factbook page regarding Pakistan at www.cia.gov.

executive branch. Supreme court justices are appointed by the executive to oversee a common law legal system influenced by Islamic Sharia law.

Applicant has no plans to return to Pakistan, acknowledging the dangers posed by Taliban activities in rural areas and the threat of kidnappings in urban areas. He has no financial or property interests there. He moved to his current residence in 2015 after he found employment at the military installation where he still works. Although they rent their current residence, Applicant and his wife still own a house they bought five years ago in another state. It is worth about \$460,000. Applicant earns about \$68,000 annually in his current job. (Answer; Gx. 4; Tr. 68 - 71)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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 presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national

⁶ See Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁹

Analysis

Personal Conduct

Applicant demonstrated poor judgment by failing to notify his employer of his travel plans to Pakistan. He exacerbated his conduct by failing to report his travel after the fact. It was not until he was interviewed for his clearance seven months later his foreign travel was revealed. His conduct in this regard violated his employer’s policies regarding foreign travel, specifically as it related to Pakistan. The facts presented by the Government’s information and confirmed through Applicant’s statements and admissions raise a security concern expressed at AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, the following AG ¶ 16 disqualifying conditions apply, at least, in part:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations; and

(e) personal conduct or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Taking AG ¶¶ 16(d) and 16(e) together, Applicant’s conduct violated his employer’s overseas travel policy on a single occasion. There is no pattern of dishonesty or rules violations here. Nonetheless, his decision to travel to Pakistan without notice to or permission from his employer most closely falls under this disqualifying condition. Further, Applicant’s travel to Pakistan potentially created a vulnerability to exploitation that his employer’s policy arguably was meant to address.

⁹ See *Egan*; AG ¶ 2(b).

His decision to conceal his actions before, during, and after his travel risked his employment status and eventually caused his termination.

I also conclude that the following AG ¶ 17 mitigating conditions apply

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has acknowledged his poor decision making and is now fully aware of the need for strict adherence to policies and security concerns about foreign travel. Available information shows that Applicant's conduct here was an isolated event that is not recent and is unlikely to recur. The information about his trustworthiness and character provided by his military commanders at or near the time of this event supports a conclusion that Applicant's judgment is otherwise sound and does not pose a security concern. On balance, I conclude that the security concerns under this guideline are mitigated.

Foreign Influence

The security concern about foreign influence is stated at AG ¶ 6:

[f]oreign 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.

More specifically, available information requires consideration of the following AG ¶ 7 disqualifying conditions:

(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; and

(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.

The SOR is supported by reliable information that showed he has close family ties to citizens of Pakistan who still reside there. The presence of his and his wife's

siblings in Pakistan presents a heightened risk of coercion or exploitation. AG ¶¶ 7(a) and 7(b) apply.

Available information also requires application of the following AG ¶ 8 mitigating conditions:

(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 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 interest in favor of the U.S. interest; and

© 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.

Applicant's family ties, although close by definition, are not likely to cause a conflict between his obligation to protect classified information and the interests of the Pakistani government. Applicant has lived and worked in the United States since 1991. He and his wife are naturalized U.S. citizens who are raising their American-born children here. All of their assets are here, and Applicant has held a security clearance in connection with highly-sensitive work in a combat zone since about 2009. The fact that he violated company policy when he traveled to Pakistan for personal reasons in 2014 was an isolated instance of poor decision making that is unlikely to recur. All four of his and his wife's parents are deceased. Applicant has no desire to return to Pakistan. Available information about his relationships with family members in Pakistan (and in the United States for that matter) shows that he has little contact with any of them. None of his Pakistani relatives has any connection to the government there, and for all they know, Applicant drives a taxi cab for a living in the United States. The foregoing presents a sufficient basis for application of the cited mitigating conditions. On balance, I conclude available information sufficiently mitigates the security concerns about Applicant's relatives in Pakistan.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has served the interests of the United States military in foreign combat zones with distinction. The information he presented in Ax. B, and his credible testimony about the issues in this case show that he has the integrity, trustworthiness, and commitment to U.S. interests required of someone in whom the Government might entrust sensitive information. The presence of family members in Pakistan reasonably poses security concerns, but in light of the record evidence as a whole, I conclude it is not likely to cause Applicant to act contrary to the national interest. A fair and commonsense assessment of the record as a whole shows the security concerns raised by the Government's information are mitigated.

Formal Findings

Formal findings 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 E:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.f:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge