



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-06129

Appearances

For Government: Caroline E. Heintzelman, Department Counsel
For Applicant: *Pro se*

01/24/2017

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the foreign preference trustworthiness concerns, but not the foreign influence trustworthiness concerns, raised as a result of his connections to Pakistan. Eligibility for access to ADP I/II/III sensitive information is denied.

Statement of the Case

On March 15, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR in writing on April 13, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on September 8, 2016, and issued a Notice of Hearing on September 29, 2016, scheduling the hearing for October 18, 2016. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence, which were admitted without objection. Applicant testified and offered exhibits (AE) A through E into evidence, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 2,

2016. The record remained open until November 19, 2016, to give Applicant an opportunity to submit additional documents. Applicant submitted an additional document (with 18 pages) that I marked as AE F and admitted without objection.

Procedural Rulings

Department Counsel requested administrative notice (AN) of facts concerning Pakistan. She provided five supporting documents to show detail and context for those facts (HE 1.) Applicant did not object to the request or documents, and Department Counsel's request was granted. (Tr. 13.) The facts administratively noticed are limited to matters of general knowledge and pertinent to Pakistan, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all allegations contained in the SOR. His admissions are incorporated herein as findings of fact. (Answer.)

Applicant was born in Pakistan. He is 41 years old and unmarried. He has no children. He attended high school there. He came to the United States in 1992 on a student visa. He received a bachelor's degree from a U.S. university in 1997. (Tr. 15-17.) After graduating, he worked at a financial institution for nine years. He subsequently worked for other private companies until he started his current position with a health care company in 2010. (Tr. 18-20.) He became a naturalized U.S. citizen in 2012. (Tr. 37.)

Applicant's parents were born in Pakistan. His father is deceased. His mother, age 80, is a citizen resident of Pakistan. (Tr. 21) He does not send her any money. (Tr. 23.) His mother was visiting at the time of this hearing. She had been in the United States for about four months. She also visited him in 2015. She visited two other times. Applicant is attempting to obtain permanent residency in the United States for his mother. (Tr. 24-26, 29.) He speaks to her once every week or two. (Tr. 29-30.) When she visits him, Applicant pays for her living expenses; she uses her money for shopping. (Tr. 35.)

Applicant has one brother and three sisters, all of whom are citizens and residents in Pakistan. None of them work for the Pakistani government. He has not spoken to or seen his sisters for three or four years. He speaks to his brother, an accountant, once a year, and saw him three or four years ago when Applicant visited his mother. His brother lives about 900 miles from Applicant's mother. (Tr. 22, 30, 32-33, 42.) One of Applicant's sisters is a physician; another is a teacher; and the other sister is an accountant. None of his siblings have visited him in the United States. (Tr. 26.) He does not have a good relationship with his siblings. His occasional conversation with them pertains to his mother. (Answer.)

After leaving Pakistan in 1992, Applicant returned to Pakistan in 1998 for his father's funeral. He next returned in 2004 or 2005. (Tr. 28.) He also visited in 2006,

2007, 2010, 2012, and 2013. He has not returned since 2013. He stated that the only reason he has returned to Pakistan is to see his elderly mother. (Tr. 26-27; Answer; AE F.) His mother has limited contact with his siblings. (Tr. 41.)

Applicant has a Pakistani passport that was issued in 2012 and expired in 2015. He has no intention of renewing it. (Tr. 36; Answer.) After becoming a U.S. citizen, he used it twice to travel to Pakistan in 2012 and 2013. (Tr. 38.) He stated he used the Pakistani passport so he could keep a “low profile while traveling there,” and not give the impression that he is a rich person coming into the country, which could lead to him being kidnapped. The passport made it easier for him to go through customs. (Tr. 39; GE 2.) He did not know that using the passport could create a trustworthiness concern. He does not have any plans to return to Pakistan. (Tr. 38-39; GE 2.) He is willing to “swear that I have renounced Pakistan citizenship, in addition to giving the passport or tearing it apart I have no ties to Pakistan except travel and I can travel on my US passport.” (Tr. 37.)

Applicant owns his residence in the United States, which he purchased in 2013 for about \$575,000. The mortgage balance is about \$375,000. He has about \$400,000 in retirement accounts in the United States. (Tr. 23-24.) He also owns two other houses; one has a mortgage and the other one is paid. (Tr. 34.) He estimates his U.S. assets total about \$700,000. He does not have any assets in Pakistan. (Tr. 40.)

Applicant submitted a Certificate of Appreciation he received from his employer. (AE A.) His performance evaluations for 2013, 2014, and 2015 document successful work and participation in achieving his employer’s expectations. (AE C, D, E.)

Pakistan

Pakistan is an ally of the United States and it has a history of political unrest, intolerance, human trafficking, and the presence of the Taliban and al-Qaeda, terrorist organizations, which continue to assert power and intimidation within the country and the bordering country of Afghanistan. Safety and security are key issues because these terrorist organizations target United States interests in Pakistan and in Afghanistan by suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains high and the country’s human rights record remains poor. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing.

Policies

Positions designated as ADP I, II, and III are classified as “sensitive positions.” (Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security)

Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, 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 to be used in evaluating an applicant's eligibility for access to sensitive 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 to [sensitive] information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to sensitive information seeks to enter 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 protected information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Foreign Preference

The trustworthiness concern relating to the guideline for foreign preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline sets out a condition that could raise a trustworthiness concern under AG ¶ 10 and be disqualifying. The following is potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

Applicant has a Pakistani passport, which was issued in 2012 and expired in 2015. He became a U.S. citizen in early 2012, and used that passport later in 2012 and 2013: The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference trustworthiness concerns are described under AG ¶ 11. One is applicable:

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant stated that the passport expired in 2015. He said he did not know that using it could create a trustworthiness concern. He does not intend to travel to Pakistan in the future. He has a U.S. passport. AG ¶ 11(e) provides mitigation.

Foreign Influence

AG ¶ 6 explains the trustworthiness concerns pertaining to foreign influence as follows:

Foreign contacts and interest may be a [trustworthiness] 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.

AG ¶ 7 sets out two conditions that could raise a trustworthiness concern and may be disqualifying 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; 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.

AG ¶¶ 7(a) and 7(b) apply. Applicant's mother and four siblings are citizens and residents of Pakistan.

The mere possession of close family ties with a family member living in Pakistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of sensitive information. (See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)).

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 or inducement. The risk of coercion, persuasion, or duress is greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the foreign country is known to conduct intelligence collection operations against the United States, or is a known terrorist haven. The relationship of Pakistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with family members living in Pakistan do not pose a risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist family members with ties to Pakistan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding [sensitive] 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 interest inimical to those of the United States." ISCR Case No. 01-11570 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 at **15-16 (App. Bd. Mar 29, 2002.)

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified, sensitive, or economic information from or through Applicant or his family, nevertheless, it is not prudent 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. Applicant's relationship with his mother, brother, and three sisters, living in Pakistan, creates a potential conflict of interest because these relationships could raise a trustworthiness concern about his desire to assist or protect those family members by providing sensitive information. Accordingly, Applicant's family connections have a potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about the potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence trustworthiness concerns. Those with potential application in this case are:

(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

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Since leaving Pakistan Applicant has maintained close contact with his mother, occasional contact with his brother living in Pakistan, and sporadic contact with his sisters. His loyalty and connections to his family, in particular to his mother, are positive character traits. However, for trustworthiness purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a). Applicant failed to provide sufficient evidence to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are [Pakistan] residents and citizens could create a risk for foreign influence or exploitation."

Applicant has an ongoing and close relationship with his mother, and an interest in protecting her. His communications with her are frequent and not casual. He visited

her in Pakistan at least seven times since arriving in the United States in 1992. In fact, he stated that the primary reason he returns to Pakistan is to see her. She has visited him in the United States at least three times, and stayed for several weeks. He has annual contact with his brother. Accordingly, Applicant failed to establish the mitigating conditions set forth in AG ¶ 8(c) as to his mother or brother. He has contact with his three sisters every couple years. His relationship with all siblings is strained; however, based on the infrequent contacts and nature of his relationship with his sisters, the evidence established some mitigation under AG ¶ 8(c) as to them.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant has lived in the United States since 1992, about 24 years. He became a citizen in 2012. He attended a U.S. university where he completed a degree, and subsequently began working for U.S. companies. He has been successfully employed with his current employer since 2010. He owns three houses in the United States. His real property and financial assets have an estimated value of about \$700,000. He does not own any assets in Pakistan. These are facts that indicate Applicant can be expected to resolve a conflict of interest in favor of the United States. AG ¶ 8(b) provides some mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a position of trust by considering the totality of the Applicant's conduct and relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Some mitigating evidence weighs in favor of granting Applicant a position of trust. He is an intelligent, articulate, and educated person, who has lived in the United States for 24 years. He attended a U.S. university. He owns three houses in the United States and has significant assets here. He has successfully worked for his current employer for six years.

The circumstances tending to support denial of Applicant's clearance are more persuasive than the facts weighing in favor of approval of his request for a position of trust. Applicant's mother and four siblings are citizens and residents of Pakistan. He does not have family members in the United States. His frequent contact with his mother and assistance in her pursuit of immigration to the United States indicate his strong commitment to her safety and welfare. He has annual contact with his brother, and some, albeit infrequent, communication with his three sisters. More importantly for trustworthiness purposes, there is a significant risk of terrorism and human rights abuses in Pakistan. Applicant admitted there is a threat of being kidnapped if he used a passport from a country other than Pakistan. Terrorists or the Pakistani government could attempt to use Applicant's family members to obtain protected information and compromise Applicant's responsibilities to the United States.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant mitigated the trustworthiness concerns arising under the foreign preference guideline, but he has not fully mitigated the trustworthiness concerns pertaining to foreign influence. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a position of trust.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is denied.

Shari Dam
Administrative Judge