



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-06480
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Jason R. Perry, Esq.

09/14/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate foreign influence security concerns. Clearance is granted.

Statement of the Case

On April 11, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to and contact with relatives in Pakistan raised a security concern under the foreign influence guideline. Applicant answered the SOR and requested a hearing (Answer). DoD subsequently amended the SOR to add two further allegations, which Applicant also answered.¹

On April 11, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified and the exhibits offered by the parties were admitted into the administrative record without objection.² The hearing transcript (Tr.) was received on April 19, 2017, and the record closed on April 25, 2017.

¹ The additional foreign influence allegations and Applicant's response to them are incorporated and made a part of Applicant's original SOR and Answer.

² Government Exhibits 1 – 11; Applicant's Exhibits A – O. The discovery letter, correspondence with the parties, the notice of hearing, and case management order were marked Appellate Exhibits I – IV.

Findings of Fact

Background & Relatives in Pakistan

Applicant was born in Pakistan. He immigrated to the United States in 1981, and has lived continuously in the United States to the present date. He became a U.S. citizen in 1992. He earned an associate's degree from a U.S. college. He also graduated from a U.S. corporate-sponsored school that provides specialized training to those seeking to work in one of its franchise retail stores. He earned a living working at one of those stores and as a limo driver before becoming a contract linguist for the U.S. Government in 2010.

After becoming a naturalized U.S. citizen in 1992, Applicant returned his former Pakistani passport to the Pakistani consulate in the United States. He is not a dual citizen. He never voted in Pakistani elections, but has voted in U.S. elections.

Applicant and his wife, who was also born in Pakistan, married in 1992. She is a grammar school teacher at a local U.S. public school. Their three children were born in the United States and are currently attending either high school or college in the United States. Applicant and his wife recently purchased a 4,800-square foot home in the United States for which they paid approximately \$800,000.

Applicant's only close living relatives in Pakistan are his three siblings, two older brothers and a sister. His father passed away in 1989, and his mother passed away in 2015. His oldest brother and his wife (Applicant's sister-in-law) work in the furniture and garment industry. His other brother took over his late father's construction business, and in the past received municipal contracts to build roads and other infrastructure projects. His brothers inherited his parent's estate when their mother died. Applicant's sister does not work outside the home. None of his family members are employed by the Pakistani government or have any connection to the government.

Applicant's contact with his siblings in Pakistan has decreased over the years. He, at most, speaks to one of them three to four times a year. His uncles and aunts in Pakistan have all since died, and he has no contact with any of his distant relatives in Pakistan. He loaned his oldest brother about \$60,000 some years ago. His brother repaid the loan in full. Applicant has not provided any other type of financial assistance to his relatives in Pakistan. He does not own any property or assets in Pakistan. He does not have a bank account or any financial interests in Pakistan. He last visited Pakistan in 2014, and before then had not visited Pakistan in about six years. He credibly testified that after his mother died, he no longer has any true ties to Pakistan.

Applicant's mother-in-law (his wife's mother) became a naturalized U.S. citizen in 2015. She lives with Applicant and his wife or her other daughters. Applicant's father-in-law passed away about ten years ago, and his wife's close family members, namely, her sisters, are U.S. citizens or permanent U.S. residents who reside in the United States.³

³ Tr. 12-46; Exhibits 1, 2, 4, 6, 9, 10; Exhibit H.

Administrative Notice - The Islamic Republic of Pakistan (Pakistan).⁴

Pakistan is a federal republic. The United States has had diplomatic relations with Pakistan since its creation in 1947. Over the decades, the two countries' relationship has been guided by their common interests in a peaceful, stable, and prosperous region. The United States is Pakistan's largest trading partner and one of the largest sources of foreign direct investment in Pakistan.

The September 11, 2001 attacks led to closer coordination between Pakistan and the United States on security and stability issues in South Asia. Notwithstanding recent efforts by the Pakistani military against terrorist and other extremist groups within Pakistan's borders, the United States remains concerned about these groups ability to operate, plan, and conduct domestic, regional, and global attacks from safe havens within Pakistan. The presence of these groups in Pakistan pose a significant threat to U.S. citizens and U.S. interests. These groups have carried out attacks against the United States, the Pakistani government, and the citizens of both countries. The U.S. State Department warns U.S. citizens to defer all non-essential travel to Pakistan because of the danger posed by the presence of these groups and other armed extremist elements.

Recent U.S. State Department reports reflect that serious human rights violations have occurred in Pakistan. These reports also reflect that corruption within Pakistani society remains a significant problem.

U.S. Government (USG) Contract Employment History.

In 2010, Applicant was hired as a translator to support the U.S. military in Afghanistan. He submitted a security clearance application in connection with this employment, and reported his connections to Pakistan. He then agreed to a security clearance interview. The U.S. military conducted its own counterintelligence (CI) investigation, including a full CI interview. Applicant fully discussed his foreign connections during these interviews. He was subsequently granted a security clearance and was designated a Category (CAT) II interpreter, which allowed him access to secure areas. This designation also permitted the U.S. military to share with Applicant time-sensitive U.S. classified information. He was the only cleared CAT II interpreter assigned to the forward operating base (FOB) that he was sent to in Afghanistan.

Applicant worked in Afghanistan for his former employer from 2010 to 2013. When he returned to the United States in late 2013 to visit his family, he was fired by his former employer and told the reason for the firing was due to a clearance issue. Specifically, Applicant's former employer told him that his clearance had been suspended or revoked.

In early 2014, Applicant was interviewed by the FBI and military intelligence. He was questioned about his work in Afghanistan and his association with members of the Afghan military. Applicant discussed his work in support of the U.S. military, and his contact with the Afghan military and others in his role as a USG contract translator. He

⁴ The matters accepted for administrative notice are taken from Exhibit 11, as updated by relevant and reliable U.S. Government publications appended to the record as App. Exh. V.

told the investigators that he followed rules and regulations about the dollar amount in gifts that U.S. contractors and service members could give their Afghan counterparts. He estimates that in the three years he worked in Afghanistan, the gifts he gave to Afghan soldiers totaled less than \$150. He described these gifts as clothing and other consumer products that Afghan soldiers could not get and/or afford, but that he could easily and cheaply order over the internet from Walmart and other large U.S. retailers.

Applicant suspects that the investigation was started after someone who was jealous of his CAT II status in Afghanistan falsely accused him of some sort of impropriety. Applicant states that he saw one of the investigators a few weeks after the interview, and was told that the investigation had been closed and he would be able to return to Afghanistan with no issues. He was later told by his facility security manager that his security clearance had never been suspended or revoked. He was subsequently hired by USG contractors after going through a second CI investigation. He has worked as a cleared linguist helping train U.S. military members deploying to Afghanistan.⁵

A retired U.S. non-commissioned officer (NCO), who worked closely with Applicant during his (Applicant's) final year in Afghanistan, submitted a letter corroborating issues that Applicant described encountering when their base was combined with several others. Specifically, the senior NCO writes that Applicant was the lone CAT II interpreter on the joint base and he (Applicant) was subject to reprisals after voicing concerns when non-cleared translators were used in secure areas or were provided classified information to translate.⁶ Applicant believes these personnel issues led to the purported tip to the FBI.

In mid-2014, Applicant submitted another security clearance application. He went through another clearance interview and a third CI investigation. He once again self-reported and fully discussed his foreign connections and contacts. He reports also taking and passing a polygraph in connection with a prospective job offer with a USG agency.⁷

Applicant received numerous awards and decorations for his work in support of the U.S. military in Afghanistan.⁸ His final performance appraisal from his supervisor in Afghanistan, a senior U.S. military officer, reflects that Applicant received the highest rating and score for his job knowledge and the quality of his work. He also received the highest rating of "outstanding" for his "compliance [with] policies, procedures and workplace practices," dependability, judgment, and mission readiness.⁹ U.S. military officers and senior NCOs who served with Applicant in Afghanistan at the beginning and

⁵ Tr. 46-54, 57-64; Exhibits 1, 2, 5, 6, Exhibits A – D. Other than Applicant's pre-hearing statements and testimony regarding the joint FBI-military investigation, the nominal gifts he gave Afghan soldiers, and the status of his security clearance, no (independent) evidence was offered regarding these matters. Applicant's testimony about these matters was consistent with his earlier statements and other evidence.

⁶ Exhibit I.

⁷ Tr. 62; Exhibits 1 – 4.

⁸ Exhibits L – O.

⁹ Exhibit J.

at the end of his three-year deployment submitted letters providing their favorable opinions about Applicant's work ethic, reliability, and loyalty to the United States.¹⁰ Following are some of the comments that these individuals gave about Applicant.

From a now retired E-8 with nearly 25 years of military service.

Applicant and I were deployed together in Afghanistan in 2010. . . . Immediately upon joining my team at FOB X, . . . he increased our effectiveness . . . He was always available and ready to assist in whatever we were doing, and became a trusted representative . . . He understood our mission and intuitively weaved American culture and sensitivities with that of our Afghan and Pakistani colleagues without incident.¹¹

From a former military supervisor from 2010 through 2011.

On a daily basis, [Applicant] would interpret and translate both classified and unclassified information to include verbal and written communications. . . . [His] trustworthy reputation, professionalism, and accuracy allowed him to be selected on multiple occasions to translate high-level "border flag" meetings.¹²

From another former U.S. military supervisor.

I had the distinct pleasure of working with [Applicant] for nearly 12 months in Afghanistan . . . [and] I can wholeheartedly recommend [him], having become intimately aware of his phenomenal work ethic, reliability and trustworthiness while working together in a very sensitive capacity. . . . [His] capabilities and work ethic as an interpreter are impeccable, but his assistance and advice on sensitive matters dealing with international counterparts were crucial to our mission. . . . Some of the issues that I sought and received [his] advice included . . . acceptable methods to coordinate Special Operations missions . . . In summary, [he] provided outstanding professional advice and support that, in the hands of a less capable individual, could easily have endangered both our mission and the lives of American and allied Soldiers during security operations. I would proudly and unreservedly work with him again.¹³

From a senior NCO who served with Applicant from 2012 through 2013.

[Applicant] was the category two interpreter assigned . . . to that Firebase. He took his job very seriously and was on call 24 hours a day due to his

¹⁰ Exhibits A – D, I.

¹¹ Exhibit A.

¹² Exhibit B.

¹³ Exhibit C.

indispensable knowledge . . . I worked with [him] every day for eight months. His job was crucial to the success of mine . . . If I felt that any member of the [local coalition forces] was being deceptive, I would have [Applicant] listen to their conversation without them knowing in order to get to what they were plotting. [Applicant] never did anything that would lead me to question his allegiance.

It is now April 2016, I have kept in good contact with [Applicant] for four years. [His] character is impeccable. He is warm, giving and because of his Pashtun upbringing never wants to let anyone down. I trust him so much that he was invited to my own wedding.¹⁴

Applicant has continued to excel at his job as a cleared linguist over the past three years. The executive officer for the military base that Applicant works at writes:

I have worked with [Applicant] in both a civilian and military capacity and can attest that he is a person with undying patriotism for the United States of America . . . [his] unmatched work ethic, determination for the success of the mission, and positive attitude set him apart from any linguist that I have had the opportunity to work with in my last 7 years in the intelligence community. . . [He] has been a valuable asset to our team and he has produced many products that have indefinitely saved the lives of our fellow soldiers deployed in the CENTCOM AOR.¹⁵

Applicant's recent work in support of the USG was recognized in March 2017, when he received his company's highest award.¹⁶ His current site lead states: "[Applicant] has proved himself daily to be a highly capable linguist, and a conscientious and reliable employee who pays meticulous detail to work requirements, SOPs, and regulations."¹⁷

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).¹⁸

¹⁴ Exhibit I.

¹⁵ Exhibit E.

¹⁶ Exhibits F, G. *See also* Exhibit K (2013 decoration for outstanding work).

¹⁷ Exhibit F

¹⁸ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14.¹⁹ Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See also SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain

¹⁹ See also ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (decision reversed because Department Counsel failed to present sufficient evidence); ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (rejecting argument that non-alleged conduct can be the sole basis for an adverse decision).

degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's relatives in Pakistan, the joint FBI-military investigation that was closed without any finding of wrongdoing, and the nominal gifts Applicant provided coalition partners that he worked with in Afghanistan raise a security concern. The latter two matters do not raise a security concern. Applicant's familial ties to Pakistan, however, potentially raise a foreign influence security concern. This concern is explained at AG ¶ 6:

Foreign contacts and interests . . . are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest.

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.²⁰

In assessing the security concerns at issue, I considered all disqualifying and mitigating conditions listed under Guideline B, including the following:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

AG ¶ 8(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 . . . and the interests of the United States;

²⁰ See *generally* AG ¶ 6. See also ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

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; and

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

An applicant with relatives in a foreign country faces a high, but not insurmountable hurdle, in mitigating security concerns raised by such foreign ties. An applicant is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”²¹ However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.²² Moreover, when an applicant’s foreign relatives reside in a country where elements hostile to the United States and its interests operate somewhat freely, such an applicant faces a very heavy burden in mitigating security concerns raised by their connections to and contacts with foreign relatives.²³

Here, Applicant immigrated to the United States over 35 years ago and has been a U.S. citizen for 25 years. He has created a life for himself and his family in the United States. He has established strong bonds to the United States through his family and his work. His contact with his remaining relatives in Pakistan and the strength of those familial ties have weakened markedly over the years, especially after his mother’s death two years ago. At the same time, Applicant’s connections to and commitment to the United States have grown exponentially since 2010, when he was first granted a security clearance. Over the past seven years, he has demonstrated his reliability, trustworthiness, and conscientious in handling and safeguarding classified information. In light of the overwhelming record evidence, Applicant can be expected to resolve any potential conflict of interest in favor of U.S. national security interests.

A close examination of a person’s conduct and circumstances must be made in all security cases. In a Guideline B case that involves an examination of the relevant country at issue, to include their present relationship with the United States and other relevant factors. A past favorable clearance adjudication does not bar security officials from reassessing an applicant’s eligibility, especially when new matters arise. After reviewing

²¹ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

²² ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

²³ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

and weighing the evidence, both favorable and unfavorable, I find that Applicant mitigated any security concerns arising from his foreign familial connections. All of the above listed mitigating conditions apply in full or in part, and together with the favorable whole-person factors raised by the evidence,²⁴ mitigate the foreign influence security concerns.

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 (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a – 1.f: For Applicant

Conclusion

In light of the record evidence, it is clearly consistent with the interest of national security to grant Applicant continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

²⁴ See AG ¶ 2 (whole-person concept). See *a/so* SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).