



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06527

Appearances

For Government: Adrienne Driskill, Esq.
Department Counsel

For Applicant: Shirin Shokrollahi, Esq.
Griffith, Young & Lass

July 25, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

On April 26, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence).¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on June 21, 2016, and requested a hearing before an administrative judge. (Answer.) The case was originally assigned to another

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

administrative judge on August 24, 2016. It was reassigned to a second administrative judge on September 12, 2016. The case was reassigned to me on September 20, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 20, 2016, scheduling the hearing for October 26, 2016. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 3, which were admitted without objection, and Hearing Exhibit (HE) I for Administrative Notice concerning The Islamic Republic of Pakistan (Pakistan). Applicant testified on his own behalf and presented fifteen exhibits (Applicant Exhibits A through O), which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 3, 2016.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Pakistan. (Tr. 13-14.) Department Counsel provided a five-page summary of the facts, supported by six Government documents pertaining to Pakistan, collectively identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Guideline B, Foreign Influence

Applicant admitted SOR allegations ¶¶ 1.b, through 1.e. He admitted in part and denied in part SOR allegation ¶ 1.a, because his mother passed away before issuance of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43-year-old employee of a defense contractor. He has been employed with the defense contractor since 2009. He has held a security clearance since 2009. He is married to a native-born American citizen, and has two native-born American children.

Applicant was born in Pakistan in 1973. Applicant's mother passed away in 2016. His father is 85 years old and retired. He has two older brothers and one older sister. All of them are citizens and live in Pakistan. Applicant's sister takes care of their father. He talks to her about twice a month to enquire about his father's health, which is fragile. He has even less contact with his brothers. Applicant's family lives in a safe area of southwestern Pakistan, far away from any conflict zones. (Tr. 24-30, 74-78.)

Applicant's oldest brother is married and has three sons. Applicant also has two cousins. He communicates with them very infrequently, primarily when he is in Pakistan on a visit. (Tr. 30-33.)

Applicant's parents were very poor. In order to get an advanced education, Applicant joined the Pakistani military in 1991. He was severely injured in 1995 in a training accident. He was eventually discharged in approximately 1999 from the Pakistani military due to his injuries. Because of his injuries he receives a small pension from Pakistan. The pension began at \$40 a month and is now approximately \$140 a month. This pension is automatically deposited in a bank account in Pakistan. Applicant's father has access to the money and withdraws some from time to time. Applicant submitted bank records substantiating this point. Applicant testified that he is more than willing to forego this money, since it is a miniscule amount compared to his assets in the United States. (Tr. 33-38, 42-46, 52, 63-66; Applicant Exhibits A, F, and O.)

Because of the advent of social media, Applicant was able to regain contact with some of his colleagues from his time in the military. However, the contacts are very sporadic, since Applicant does not like to use social media. He has no idea where most of these people live or what they currently do for a living. (Tr. 38-42.)

Applicant married his American wife in 1997. He moved to the United States in 2000, and became a naturalized citizen in 2003. Applicant testified that he has worked hard since coming to the United States. Applicant's wife was born and raised in the United States, and has lived in the same city all of her life. Applicant is active in his community. His wife and children do not speak Urdu, the national language of Pakistan. Applicant does not travel to Pakistan frequently. His last trip was in February 2016, for his mother's memorial service. Before that his last trip to Pakistan was in 2013. (Tr. 52-55, 66-68, 71-72; Applicant Exhibit B.)

In addition to working in the defense industry, Applicant is an entrepreneur. He owns commercial property in the United States. In addition, he also has several bank and investment accounts located in the United States. His net worth in the United States is approximately one million dollars. (Tr. 46-52, 58-63; Applicant Exhibits D, J, K, L, M, and N.)

Applicant is very aware of the responsibilities that come with holding a security clearance. He has been holding a security clearance since 2009 without problems. He has been very proactive in letting his supervisors know of any trips he was making to Pakistan. (Tr. 55-58, 73-74.)

Pakistan

I take administrative notice of the facts set forth in HE I. Pakistan is a parliamentary federal republic, created in 1947 after British India was partitioned when the British government granted India its independence. Pakistan was created for the Moslem population of the Indian sub-continent. Its population is about 170 million. After September 11, 2001, Pakistan reassessed its relations with the Taliban and supported the U.S. and international coalition in its efforts to remove the Taliban from power. Many Islamic extremists and terrorists are known to inhabit parts of Pakistan, leading to a growth of their insurgency. Although Pakistan has intensified its efforts to deal with the

violence and terrorists, the country continues to experience serious problems. The U.S. Department of State confirms that many border cities are known as safe havens for terrorists. Numerous suicide bombings and kidnappings have taken place over the past years. Human rights violations continue to be a significant problem, as killings, torture, and disappearances remain prevalent. The Pakistani government maintains domestic intelligence surveillance activities. The U.S. government warns Americans against travel to Pakistan.

Mitigation

Applicant is a highly respected person and employee. His performance reviews for the years 2013 through 2015 show that he consistently achieves, and occasionally exceeds, the high expectations the company holds for of an employee of his experience and position. He has received personal recognition for his work, and is viewed as a subject matter expert in his field. (Applicant Exhibits E and G.)

Several people with personal and professional knowledge of Applicant submitted letters on his behalf. Four of the five correspondents have known Applicant for thirteen years or more. All five are members of the defense industry. Applicant is described as a person who displays “a very high degree of honesty, integrity, responsibility, courage, leadership and interpersonal skills.” All the writers have knowledge of his family background, and recommend him highly for a position of trust.

Policies

When evaluating an applicant’s suitability for a security clearance, 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 classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for national security eligibility 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.

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

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 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 or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property 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. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(a) contact, regardless of method, 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;

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant is from Pakistan and has family members there. In addition, he receives a small pension from the Pakistani government due to his service in the Pakistani military, which is deposited in a Pakistani bank. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 United States;

(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;

(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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant proved that he is a conscientious and patriotic American citizen and member of the defense industry. He has demonstrated that, while he is in contact with his family in Pakistan, there is no conflict of interest, because his sense of loyalty or

obligation to Pakistan is minimal. Further, he has deep and longstanding loyalties to the United States. He has lived in the United States permanently since 2000. His wife is a native-born American citizen, as are his two children. His financial assets in the United States far outweigh the minimal amount he receives from the Pakistani government, and which he is willing to forego if necessary. Applicant presented evidence of substantial ties to the United States. Applicant is knowledgeable about his security responsibilities and has been consistently fulfilling them for eight years. He can be expected to resolve any conflict of interest in favor of the United States interest. Guideline B is found for Applicant.

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 the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but may warrant additional comment.

Applicant has a distinguished history of working in the defense industry and is respected by the people who wrote letters for him. He performs well at his job. While he was born Pakistan, he is an American by choice. He has been residing in the United States for the past 17 years. His closest familial ties are with his wife and children, all of whom are American citizens. His remaining contacts in Pakistan are infrequent. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:

FOR APPLICANT

Subparagraphs 1.a through 1.e:

For Applicant

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 national security eligibility. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge