



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



In the matter of:)
)
) ISCR Case No. 15-07270
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant has mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 5, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant answered the SOR on March 17, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on July 11, 2016. Applicant received the FORM on July 14, 2016, and had 30 days to submit material in refutation, extenuation, or mitigation. Applicant responded on August 10, 2016, by annotating in the margins of page four of

the FORM. This response was marked as Applicant's Exhibit (AE) A and it was admitted into evidence without objection. The Government's documents, identified as Items 1 through 5 were also admitted into evidence without objection. The case was assigned to me on May 1, 2017.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan. The request and the attached source documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in the HE I source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated in this decision.

Department Counsel included an Amendment to the SOR incorporated as part of the FORM at page two. This Amendment was to conform the allegations to the record evidence. It alleged that Applicant had yet a third brother who was a resident and citizen of Pakistan. Applicant admitted this allegation at SOR ¶ 1.h in his response to the FORM.

Findings of Fact¹

Applicant is a 37-year-old sponsored for a security clearance by a defense contractor. He was born in Wazirabad, Pakistan and came to New York City in 1999. He was naturalized in 2005. He obtained his bachelor's degree in August 2014 and has been employed by a federal contractor since June 2015. He has been married to a fellow-Pakistani native since October 2007, and they live together in the United States with their two children, Applicant's mother, his two brothers, and one sister. All have emigrated from Pakistan to the United States.²

Applicant admitted the SOR allegations in his Answer to the SOR of April 2016. He attached a one-page letter dated April 26, 2016, which provided explanations as follows:³ Applicant is studying for his certified-public-accountant designation. Applicant sponsored three of his siblings (2 brothers and a sister) to become U. S. citizens. They got their visas and came to the U.S. in July 2016. He has a third brother still residing in, and a citizen of, Pakistan.⁴ His mother has applied for U.S. citizenship. Applicant's wife

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SF 86) dated June 1, 2015. (Item 3)

² Item 3, page 20.

³ Item 2, attached letter.

⁴ Department Counsel included an Amendment to the SOR as part of the FORM. Applicant did not object and admitted this Amendment which alleged that Applicant had a third brother, Numan Ahmed Sahi, who is a citizen and resident of Pakistan.

has a green card and she now teaches in the public schools in Virginia. Applicant has no real estate or other assets in Pakistan.

Applicant submitted a Questionnaire for National Security Positions (SF 86) on June 1, 2015. Applicant reports having no previous security clearance in his SF 86. He filed for Chapter 7 bankruptcy protection in 2007, and had approximately \$50,000 in credit-card-debt discharged because he was affected by the downturn in the real-estate market as a condominium owner. So, he used credit cards to make his mortgage payments.

Applicant stated in his subject interview of July 2015 that he previously had two Pakistani passports issued in 2003 and 2005 respectively.⁵ They are now expired since January 2015. He last used a Pakistani passport to travel in to Pakistan in late 2004, before he became naturalized. He last traveled to Pakistan for a wedding in January 2015, when he stayed until March 2015. He previously sent \$500 per month to his brother in Pakistan to help out with housing costs.⁶ Since that brother and two other siblings came to the U.S. in 2016, Applicant no longer has to send money for their housing. Applicant's third brother resides in Pakistan. Applicant does not know how his third brother is employed because he frequently changes jobs. His brother-in-law is also still residing in Wazirabad, Pakistan and looking for work. Applicant reports having quarterly contact with them.⁷ He has no other contact with Pakistan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.

⁵ Item 4.

⁶ Item 3, page 38.

⁷ Item 4, page 4; Item 3, pages 28-29.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Under Directive ¶ E3.1.14, the Government must present 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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;

(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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

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

Applicant's brother and his brother-in-law, are citizens and residents of Pakistan. Pakistan continues to have human rights problems, and it has been victimized by terrorist attacks. It is axiomatic that corruption and human rights violations are widespread in Pakistan. The Federally Administered Tribal Areas are a safe haven for terrorism, and have been for at least 15 years. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(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; 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.

I considered the totality of Applicant's family 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 classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.⁸

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in 1999. He became a U.S. citizen in 2005. His wife is a lawful resident alien, and they have two children who are U.S. citizens. Applicant obtained his associate's and bachelor's degrees here. He has longstanding relationships and loyalties here. Although he has had financial problems, they were largely due to the downturn in the real estate market. He is gainfully employed by a federal contractor, has sponsored family members for U.S. citizenship, and appears to be a solid citizen. He continues to have only fleeting, quarterly contact with his brother-in-law and the third brother back in Pakistan. There is no indication that they are in any way affiliated with the Pakistani Government or intelligence services. His other siblings have come to the U.S. and are no longer vulnerable to foreign coercion or exploitation. Applicant is committed to his new life here. AG ¶¶ 8(a),(b) and (c) are applicable to

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

those remaining two foreign contacts, which are alleged in SOR ¶¶ 1.c and 1.h. Because of Applicant's minimal and inconsequential ties to Pakistan, I find that the mitigating conditions at AG ¶¶ 8(a) and 8(b) are applicable to his remaining family members in Pakistan. Those members of his family who have emigrated are presumably beyond the reach of Pakistani actors as they are now residing in the United States. All foreign influence concerns have been mitigated.

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(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the 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(a) were addressed under those guidelines.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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 – g:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge