



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-07655

Appearances

For Government: Andrea Corrales, Esq. Department Counsel
For Applicant: *Pro se*

08/03/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

On May 22, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).¹ 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 in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on December 2, 2016. A notice of hearing was issued on March 24, 2017, scheduling the hearing for June 2, 2017. Government Exhibit (GX) 1 was

¹At the hearing, the Government withdrew the sole Guideline C allegation.

admitted into evidence without objection. Applicant testified and submitted Applicant Exhibit (AX) A, which was admitted without objection. The transcript was received on June 9, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural Issues

Department Counsel requested that I take administrative notice of relevant facts about Pakistan. The request and supporting documentation are in the record as Hearing Exhibit I. Applicant objected to the content, but I overruled the objection. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations under Guideline B. He also provided explanations about the allegations.

Applicant is a 49-year-old senior engineer for a defense contractor. He was born in Pakistan in 1969 and came to the United States in 1988. He is married and has three children who were born in the United States. He became a naturalized citizen in 2008. In 1993, Applicant obtained an undergraduate degree in the United States. Before his current position, Applicant worked for an American company for eleven years. (Tr. 29) He has worked for his current employer since 2015. Applicant completed his security clearance application in March 2015. (GX 1)

Foreign Influence

The SOR alleges that Applicant's three brothers and mother-in-law are citizens and residents of Pakistan. Applicant's spouse, and three children reside in the United States with him and are U.S. citizens. Applicant acknowledged the existence of his relatives in Pakistan, but denies that they create a risk of foreign influence because he has not seen his brothers in ten years, and he does not talk to his mother-in-law. (Answer to SOR)

Applicant's wife and three children live with him in the United States. They are U.S. citizens. He does not consider himself a dual citizen. He formally denounced his Pakistani citizenship. He holds a U.S. passport. He has not traveled to Pakistan in the last 13 years. Those visits were before he became a U.S. citizen and when he was married. (Tr. 16) He did not attend his parent's funeral in Pakistan. Applicant has a brother and sister who live in the United States. (Tr. 39)

Applicant disclosed on his security clearance application his three brothers are citizens of Pakistan. One brother has been living in the United Arab Emirates (UAE). Applicant does not communicate with him. (Tr. 33) He acknowledged that he did speak with him when his father died and when his daughter graduated from school. Another brother lives in Pakistan and own a store. He rarely talks to this brother. His third

brother travels to the United States frequently for work. But Applicant stated that even when the brother is in the United States, he does not visit Applicant. None of them have knowledge of his work. None of them were in the military. He noted that they are not affiliated with any political organization. (Tr.)

Applicant's mother-in-law is a citizen of Pakistan, to visit her other daughter in the United States frequently and is studying for her advanced degree. (Tr. 30) She has not visited Applicant and his family since 2013. She is a widow. Applicant's wife does not stay in touch with her mother. (Tr.48)

Applicant has no foreign interests or real estate in Pakistan. He has not provided financial support to any foreign national. He has had no foreign government contact. He did not serve in the Pakistani military. He also stated that he had no relatives associated with any foreign government.

Applicant stated that he has half a million dollars in his U.S. retirement fund. He owns his U.S. home. He also has significant savings in his bank accounts. He earns about \$200,000 a year. (Tr. 42) His wife also works for a U.S. company.

When Applicant was questioned, he stated he could not be placed in a position of having to choose between the interest of his siblings or the Pakistani government and the interests of the United States. He left his country and has no desire to return. He also stated that he has such a longstanding relationship and loyalty to the United States that he can be expected to resolve any conflict of interest in favor of the United States. He stated his communications with his siblings is rare. Applicant pledged to help the U.S. Government because he is grateful to the United States.

Administrative Notice

The Islamic Republic of Pakistan (Pakistan)

DOHA administrative judges may accept for administrative notice uncontroverted, easily verifiable facts regarding a foreign country derived from official U.S. Government reports, the official position of appropriate federal agencies, or the pertinent statement(s) of key U.S. Government officials. The source document(s) (or, at a minimum, the relevant portion(s) of the source document should be included in the record for the potential appellate review regarding the accuracy and relevancy of the fact(s) administratively noticed. See *generally*, ISCR case No. 08-09480 (App. Bd. Mar. 17, 2010); ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

The United States has had diplomatic relations with Pakistan since Pakistan's 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.

In 2013, at the invitation of President Obama, Pakistan's Prime Minister paid an official visit to Washington to mark the strength of U.S.-Pakistani relations and advance the countries shared interest in a stable, secure, and prosperous Pakistan and the region. President Obama in his opening remarks, said:

Pakistani Americans here in the United States are enormous contributors to the growth and development of the United States. And my hope is, is that despite what inevitably will be some tensions between our two countries and occasional misunderstandings between our two countries, that the fundamental goodwill that is shared between the Pakistani people and the American people, that that will be reflected in our government's relationships and that we will continue to make progress in the coming years.

The September 11, 2001, attacks in the United States by al-Qaida led to closer coordination between Pakistan and the United States on security and stability in South Asia. Pakistan pledged cooperation with the United States in counterterrorism efforts, which included locating and shutting down terrorist camps within Pakistan's borders, cracking down on extremist groups, and withdrawing support for the Taliban regime in Afghanistan.

The United States remains concerned about the continued presence of terrorist and other extreme groups in Pakistan. These groups operate, plan, and conduct domestic, regional, and global attacks from safe havens within Pakistan. In 2014, Pakistan launched military operations to eliminate these terrorist safe havens. Although the military operations had a significant impact, some terrorist organizations continue to operate within Pakistan. The presence of these groups and other armed elements 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 potential danger posed by the presence of these groups and other armed elements.

The U.S. State Department's recent human rights report on Pakistan reflects the reported commission of human rights violations by elements within Pakistan and the Pakistani government. The report also notes that the most serious human rights problems in Pakistan include extrajudicial and targeted killings, disappearances, and torture. The report states that corruption within the Pakistani government and police is a persistent problem, and the lack of accountability, and failure to prosecute these abuses has led to a culture of impunity.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible

rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 Executive Order 10865 provides that 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." ⁵ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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.

Three disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by "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." AG ¶ 7(a). In addition, AG ¶ 7(b) provides that "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 ¶¶ 7(a) and 7(b) are raised by Applicant's relationship with his siblings who are citizens and residents of Pakistan. His spouse and three children are U.S. citizens and they reside with Applicant in the United States. AG ¶ 7(e) which provides that "shared 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" is also raised.

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,

⁷ *Id.*

regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The Government submitted country summaries of Pakistan. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationship with his siblings and mother-in-law living in Pakistan does not pose a security 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 his siblings living in Pakistan.

I conclude that Applicant’s ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. This relationship with his relatives in Pakistan creates a concern about Applicant’s “obligation to protect sensitive information or technology” and his desire to help his siblings in Pakistan.

The mere possession of close ties with a family member 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 possibly result in the compromise of classified 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).

While there is no evidence that intelligence operatives, terrorists, or criminals from within Pakistan seek or have sought classified or economic information from or through Applicant or his family, it is not possible to rule out such a possibility in the future. Applicant’s wife and three children reside in the United States with him are U.S. citizens, but Applicant’s mother-in-law is a citizen of Pakistan. The Government produced evidence to raise the potential of foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing “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(b).

AG ¶¶ 8(a), and 8(b), are applicable. Applicant’s brothers have no connections to the Pakistani foreign government. Applicant maintains little contact with them, and he has not traveled to Pakistan to visit them. Applicant’s last contact with them was in 2011. He has no real contact with his mother-in-law. The amount of contacts between an applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives.

AG ¶ 8(b) is applicable. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 1988. He has worked abroad for a U.S. contractor. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. I have also considered the ongoing situation in Pakistan with an unstable government, extensive terrorist activities, and human rights issues. Even though Pakistan is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the situation and groups in Pakistan could take an action that may jeopardize their friendly position with the United States. There are some indications that elements in Pakistan could seek sensitive information from their citizens who have family in the United States.

Applicant has strong ties to the United States. He left Pakistan when he was young. He is a naturalized U.S. citizen and has been in the United States for the greater part of his life. He has worked with U.S. agencies. He has worked in the defense field for a number of years. He is a naturalized citizen who has spent about 29 years working in this country, with his wife and three children who are U.S. citizens. He has no financial interests in Pakistan. He has firm ties to the United States and considers it his home. He has never traveled to Pakistan since becoming a U.S. citizen.

Applicant’s loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. Applicant has met his heavy burden to show that his relatives living in Pakistan do not cause a security concern.

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 an applicant's conduct and all the 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 49 years old. He is an educated man who is a naturalized U.S. citizen. He has a wife and three children who live here with him as U.S. citizens. He has spent many years working on missions to fight terrorism.

Applicant is a naturalized U.S. citizen who has lived and worked in the United States since 1988. His professional and personal life are in the United States. He worked for a U.S. defense company overseas. He stated that his three siblings in Pakistan and the UAE would not present a conflict of interest for him.

Applicant chose to leave Pakistan. He has no financial interests in Pakistan. His career is in the United States. Although he has relatives in Pakistan and has some familial ties to them, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His siblings and mother-in-law do not know the specifics of his work. His wife does not know either.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under both guidelines. Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline B | FOR APPLICANT |
| Subparagraphs 1.a-1.b: | For Applicant |
| Paragraph 2, Guideline C: | WITHDRAWN |
| Subparagraph 2.a: | Withdrawn |

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 a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge