



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 15-07728

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the foreign influence security concerns related to his connections to Pakistan. Eligibility for access to classified information is denied.

Statement of the Case

On May 12, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference, and 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on May 25, 2016, and requested a hearing before an administrative judge. On September 8, 2016, the

Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On November 15, 2016, DOHA issued a Notice of Hearing, setting the hearing for December 6, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant had no objections to the exhibits and they were admitted into evidence. Applicant testified, but did not offer any exhibits at the hearing. The record closed at the end of the hearing. DOHA received the hearing transcript (Tr.) on December 14, 2016.

On February 20, 2017, Applicant submitted documents consisting of copies of social security and identification cards for himself and his family, and copies of diplomas. Department Counsel had no objection and they are marked Applicant Exhibit (AE) A and admitted into the record.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan. (GE 3.) Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. (Tr. 14; GE 3.) The facts are summarized in the Findings of Fact, below.

Procedural Ruling

Department Counsel moved to withdraw the sole Guideline C allegation in SOR ¶ 1. Applicant did not object to the motion and it was granted. (Tr. 6.)

Findings of Fact

Applicant admitted all Guideline B allegations in SOR ¶ 2. Those admissions are incorporated in the findings below.

Applicant is 47 years old. He was born in Pakistan. He attended high school there. In 1991, he came to the United States on a student visa. He was 23 years old. He completed a bachelor's degree at a U.S. university in 1995. In 1996, he obtained U.S. permanent residency. In 2007, he became a U.S. citizen. (Tr. 16-18; GE 2.) After graduating from college, he held numerous positions. From 2009 until 2014, Applicant was employed with a private corporation. Prior to that, he was self-employed at times and had short-term contracts. In December 2014, he began his current position with a defense contractor. (Tr. 23-24; GE 1.)

Applicant met his wife while they were both attending a U.S. university. She was born in India, and is a U.S. citizen. They have been married for 18 years and have three children, ages 18, 13 and 10. Their children were born in the United States. (Tr. 16-18, 21; GE 1.)

Applicant's parents were born in Pakistan. His father has been deceased for 40 years. His mother is 72 years old and a homemaker. She is a citizen and resident of Pakistan. Applicant sponsored her for permanent U.S. residency in 2012. She subsequently lived here for six months before returning to Pakistan to see her grandchildren. She has never returned to the United States because she suffers from health problems and decided to remain in Pakistan. She subsequently lost her permanent residency status. She has not returned to the United States since leaving. Applicant communicates with her every day by phone. (Tr. 25-28.)

Applicant has four sisters and one brother, all of whom were born in Pakistan. They are citizens and residents of Pakistan. His sisters are married and homemakers. He telephones them once every four or five months. They have not visited Applicant in the United States. (Tr. 30-32.) None of his brothers-in-law has military or government connections. (Tr. 35.) Applicant's brother is self-employed. He is married and has three children. They live with Applicant's mother. Applicant speaks to his brother every four months. His family knows that Applicant works for a U.S. defense contractor. (Tr. 37-38.)

Applicant sends his family in Pakistan money periodically. About two years ago, he sent his brother between \$15,000 and \$25,000 to establish a business selling cars. Some of the proceeds of that business financially help other family members with living expenses, and lessen the financial burden on Applicant to send them money. For a period, Applicant sent his family about \$2,000 every quarter. He has not sent any money for eight or nine months. (Tr. 39-44.)

When his father died 40 years ago, Applicant, his mother, and brother inherited 12 housing properties. His share of those properties is worth about \$200,000, and includes the house where his mother and brother reside. His brother manages the rental properties. He thinks the monthly rental income is about \$1,500. That money supports his mother and brother. (Tr. 45-49, 51.)

Two or three years ago, Applicant purchased two housing lots in Pakistan as an investment. He bought the properties for between \$5,000 and \$10,000. They are now worth \$30,000. He thinks that in 10 or 20 years his return on that investment will be 400%. He would invest in more properties if he had an opportunity because the value of real estate in certain areas in Pakistan is rapidly increasing. (Tr. 50, 61.)

Applicant owns property in the United States. His house is worth \$260,000. He has a \$525,000 interest in a restaurant. His net worth is between \$1.3 and \$1.4 million. (Tr. 59-61.)

Applicant has traveled to Pakistan once or twice every year from 2007 to 2016 to visit his family. He usually stays a week or two, and resides with his mother and brother. (Tr. 28-30.)

Pakistan

I take administrative notice of the facts set forth in the Administrative Notice documents concerning Pakistan, which are incorporated herein by reference. Of particular significance are Pakistan's history of political unrest, 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 by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. 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. Few sections of Pakistan are safe or immune from violence, and the government has difficulty enforcing the rule of law.

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing 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.

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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.¹

AG ¶ 7 sets out three conditions that could raise a security 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;
- (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; and

¹The mere circumstance 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 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).

(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 relationship with his mother, one brother, four sisters, and their families residing in Pakistan raise security concerns about his obligation or desire to assist those family members by providing sensitive or classified information, if faced with pressure or coercion from an outside source. The presence of active anti-US terrorist operatives and the overall security situation that exists in Pakistan creates a heightened risk. It places a significant burden of persuasion on Applicant to demonstrate that his relationships with those family members and his significant financial interests there do 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 family members living in Pakistan or protect his property. There is substantial evidence to establish security concerns under AG ¶¶ 7(a) and 7(b).

Applicant provides ongoing financial support to his family in Pakistan and has a \$200,000 interest in 12 other family-owned real estate properties in Pakistan. These facts raise security concerns under AG ¶ 7(e).

Based on the above facts, the burden of proof to demonstrate sufficient mitigation shifts to Applicant. AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns 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;

(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.

AG ¶ 8(a) does not apply under the facts in this case. Applicant admitted the SOR allegations that his mother, brother, sisters, and their families, are citizens and residents of Pakistan. The family's physical presence in that country creates a heightened risk for exploitation, inducement, manipulation, pressure, or coercion, as there is strong evidence of terrorist organizations operating in Pakistan and human rights abuses toward citizens and residents. It is not unlikely that Applicant's family members could be threatened to the point that he would be confronted with a choice between his family's interest and those of the United States, should adverse forces learn of Applicant's work for the U.S. Government.

AG ¶ 8(b) has some application. 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 1991, and became a citizen in 2007. His wife and children are U.S. citizens and residents. He graduated from a U.S. university. He has economic ties to the United States, including owning his home and having a financial interest in a business. Prior to starting his current position in 2014, he has worked in the United States since his arrival. Although Applicant has some strong connections to the United States, his relationships to Pakistan are also deep and longstanding. Given those facts, he presented insufficient evidence to establish that he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) does not apply. After leaving Pakistan, Applicant has maintained ongoing contact with his mother and five siblings, who are citizens and residents of Pakistan. Since 2007, he has visited his family there once or twice a year. His contacts and communications with his family are frequent, and not casual.

AG ¶ 8(f) has limited application. Applicant's financial interests in Pakistan total about \$230,000, and include financial interests connected to his family's home and source of income. Within the past two years, he purchased two additional properties in Pakistan as a long-term investment. While that total amount is far less than his assets in the United States, it demonstrates that he has sufficient financial interests to Pakistan to create the potential for influence, manipulation, pressure, and conflict of interest.

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). They include the following:

- (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) 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 include 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. Applicant is an educated 47-year-old man, who was born in Pakistan, and became a U.S. citizen in 2007. He has lived in the United States since 1991. His wife and children are U.S. citizens. Both he and his wife attended a U.S. university. He has successfully worked in the United States as an employee and in his own business since graduating from college in 1996. He has accumulated over a million dollars in assets. These are positive factors in his favor.

Applicant's strong ties to Pakistan outweigh those factors. Since becoming a U.S. citizen in 2007, he has returned to Pakistan once or twice a year to see his family. He has regularly sent financial assistance to them for living expenses and helped his brother establish a car selling business by giving him between \$15,000 and \$25,000. He has significant real estate interests in Pakistan, including investment properties that he purchased two years ago. He has communicated regularly with family members over the years. While his loyalty and connections to family members in Pakistan are positive familial traits, for security clearance purposes those connections, and the heightened risk Pakistan poses to the United States, continue to outweigh the factors in favor of granting him eligibility for a security clearance.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline B.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

AGAINST APPLICANT

Subparagraphs 1.a through 1.i:

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's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge