



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07927

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

12/05/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 22, 2016, the Department of Defense (DOD), pursuant to Executive Order 10865 (as amended), and DOD Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant. It detailed the reasons under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) why DOD could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Applicant answered the SOR in writing on March 29, 2016, admitting all allegations. He also requested a hearing before an Administrative Judge. The case was assigned to the undersigned on June 6, 2016. A notice of hearing was issued on July 28, 2016, scheduling the hearing for September 7, 2016. The Government offered three documents, referenced as Government Exhibits (Exs.) 1 and 2, as well as Hearing Exhibit (HE) 1, which were received without objection. The hearing exhibit included the Government's request for administrative notice regarding certain facts related to the Islamic Republic of Pakistan (Pakistan). Applicant testified and, without objection, presented one exhibit, which was accepted as Applicant's Ex. A. The record remained open until September 21, 2016, to allow the Applicant to submit additional documentation. On September 15, 2016,

Applicant forwarded one additional document through Department Counsel, who forwarded without objection what has been accepted as Ex. B. The transcript of the hearing (Tr.) was received on that same day and the record was closed. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice regarding certain facts about Pakistan. It consisted of the official request plus five attached source documents (I-V). They were offered to aid in the analysis of security clearance issues related to foreign influence. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (*citing* ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from Government reports. Various facts pertaining to this nation were derived from the offered request, its attachments, and recent DOHA cases concerning Pakistan.¹

I have considered the aforementioned information. Although Pakistan is a parliamentary federal republic, its human rights record remains poor. Several terrorist groups operate in parts of Pakistan with impunity, and the U.S. Department of State considers it to be a terrorist safe haven. In August 2014, the U.S. Department of State warned U.S. citizens to defer all nonessential travel to Pakistan, as the presence of several terrorist groups posed a potential danger to U.S. citizens through Pakistan. This warning referenced all of Pakistan, although the majority of the country's internal strife occurs toward the country's western border. (See Ex. A; Tr. 12-13) Moreover, in May 2011, U.S. forces killed Osama bin Laden, mastermind of the September 2001 attacks on the United States and numerous other terrorist attacks around the world. He had been living in hiding in a secure residential compound within an affluent suburb of Islamabad, Pakistan's capital.

Despite these problems, Pakistan continues to cooperate with the United States on a variety of issues including counterterrorism, weapons non-proliferation, and bilateral trade. Since 2009, the United States has trained at least 1,120 members of the Pakistan military. In addition, over the past five years, the United States has committed five billion dollars of foreign aid to Pakistan.

FINDINGS OF FACT

Applicant is a 26-year-old man who was born and initially raised in the eastern part of Pakistan, toward India and a considerable distance from Afghanistan. (Tr. 17-18; Ex. A) In 1996, Applicant's father, a successful professional, immigrated to the United States.

¹ In addition, Applicant offered narrative and a map of the area including and surrounding Pakistan. (Ex. A; Tr. 11-14)

He did so in hopes of settling in a country which would offer his family a better life and superior educational opportunities for his children, despite the fact relocation would greatly reduce the status he had earned as a professional in his native land. (Tr. 20) In 2001, he was joined by his wife and children, including the young Applicant.

Although the father would never again find the level of professional work he abandoned to relocate, he was content with lesser jobs in order to bring his family to the United States. He became a United States citizen in 2002, leading to Applicant's and his siblings' status as United States citizens and their receipt of United States passports.² (Tr. 19-20) In the process, Applicant's father formally renounced his Pakistan citizenship. His mother remains a dual Pakistan and United States citizen.

Soon after his own arrival in the United States, Applicant was enrolled in the fourth grade. He has since matriculated through both elementary and secondary schools, received a high school diploma, and, in 2014, earned a bachelor's degree in computer science. Just before graduation, he started an internship with his present employer. He began working for that defense contractor as a full-time software engineer upon college graduation. In early 2015, he became a software engineer associate. Applicant is single and has no children. Today, he lives with his parents and siblings in their own home.

Before immigrating to the United States, Applicant's father was a white-collar professional working for a public entity. His mother worked for a public school. They left Pakistan before becoming eligible for government pensions. (Tr. 22)

In 2009, while attending high school, Applicant applied for an identification card from the Pakistan government. (Tr. 22) He did so to obviate the necessity of paying additional sums for a visa should he return to Pakistan (Tr. 22-23) It was received in the summer of 2009, before Applicant's 18th birthday. He used that card for a trip with his brother to Pakistan for a family wedding that same year. At the time, Applicant had no collegiate or professional ambitions. (Tr. 39) He pursued the identification card at the suggestion of family friends and his parents as a cost-saving measure. (Tr. 23) The last time Applicant was in Pakistan was in 2012, while attending college. That trip was a three-month visit with his family to see an ailing grandfather. While there, they stayed with one of Applicant's uncles, a man noted on Applicant's security clearance application (SCA) as a foreign contact. (Tr. 24)

Applicant does not consider the identity card to be essential and has been willing to relinquish it. (Tr. 25). He does not believe he ever used it because he still had a valid visa to carry with his United States passport on his last trip to Pakistan. (Tr. 36) He recently surrendered the identity card to his security manager. (Ex. B)

² One sibling, a pre-teen, was subsequently born in the United States. Applicant believes that he and his other siblings (a sister and two brothers), all of whom are single, are dual citizens based on their birth abroad and parentage. (Tr. 19, 29) If it is an issue, Applicant maintains that he is willing to formally renounce any ties to Pakistan, including citizenship, if applicable. (Tr. 30)

Among Applicant's relatives who still have a nexus with Pakistan and with whom Applicant maintains varying degrees of contact is the afore-referenced uncle, a citizen and resident of that country. In his early 50s, he is an administrator at a public school. He has not performed military service. (Tr. 25-26) Applicant does not know if this uncle is eligible for a state pension. He noted that the uncle is in the process of immigrating to the United States with his entire family in pursuit of better lives. He has already commenced the appropriate processes.³ (Tr. 26) Applicant's father is sponsoring the family in their immigration. The uncle and Applicant's parents are in somewhat regular contact, although Applicant only has incidental contact with this uncle once a month or less by telephone. The uncle does not know what Applicant does for a living. (Tr. 28)

Applicant's grandparents are citizens and residents of Pakistan, as are two more siblings of Applicant's father, a sister and brother. (Tr. 29) Applicant's grandfather is in ill health. Applicant also has younger cousins remaining in Pakistan, who were raised in that country while Applicant was living in the United States. Applicant's parents initiated contact with these relations when Applicant visited Pakistan. (Tr. 29) Applicant's contact with his grandparents and relatives is infrequent. When his family calls his father's familial home in Pakistan and Applicant joins in on the call ever couple of months, he may speak to his uncle or grandparents. (Tr. 30) None of these kin have visited the United States.

To the best of his knowledge, neither Applicant nor his family maintains any holdings or real estate in Pakistan. He believes the familial home there is technically owned by his uncle.⁴ He stresses his family in Pakistan lives out of harm's way, close to India. (Tr. 43) Applicant has no plans to live in Pakistan. He thinks of the United States as his country. (Tr. 36) In addition, he stated that he and his family "embrace this country" and he thinks of himself as having lived a life doing what every "normal American kid would do." (Tr. 42) He is active at his gymnasium, attends a house of worship, is studying for a master's degree, and he focuses on his work. (Tr. 34)

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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

³ This uncle has a wife, five daughters, and a son. (Tr. 26-27) None have a connection with the Pakistan government. Applicant's cousins are younger and "mostly still" in school. (Tr. 28)

⁴ Applicant does not believe his father has any rights to the familial home in Pakistan, noting that his father formally renounced his Pakistan citizenship, and that such citizenship is required for the ownership of property in that country. (Tr. 31)

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 not drawn inferences grounded on mere speculation or conjecture.

Under 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 applicant or proven by Department Counsel and 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.

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.” See *also* EO 12968, Section 3.1(b).

Analysis

Guideline C - Foreign Preference

AG ¶ 9 sets out the security concern relating to Foreign Preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant was born and raised in Pakistan, until he came to this country at about age 10 to join his father. Here, he became a United States citizen, was raised, educated, and reached his majority. Before reaching his 18th birthday, however, he applied for and received an identity card from Pakistan to facilitate economical more passage to that country without paying for a visa. Years later, after he reached his majority, chose a

career, and learned that his possession of the foreign document could raise security issues, he relinquished the card to his security manager and expressed his willingness to formally renounce any remaining citizenship ties to Pakistan. His acquisition of that identity card, however, is sufficient to raise Disqualifying Condition AG ¶ 10(b): action to acquire or obtain recognition of a foreign citizenship by an American citizen.

As noted, however, Applicant's acquisition of the identity card from the Pakistan government occurred before he turned 18 years of age. Such facts raise Mitigating Condition 11(c): exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor. In addition, he has surrendered the card to his security card and has shown no interest in using it in the future.⁵

Guideline B, Foreign Influence

The security concern relating to the guideline 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.

Remaining in Pakistan are Applicant's elderly grandmother, ill grandfather, and an uncle with whom he maintains contact. These individuals are citizens and residents of Pakistan, although the uncle is preparing to immigrate to the United States with his family in the near future. In addition, Applicant's mother is a dual citizen of Pakistan and the United States. His two brothers and one sister are also dual citizens of both the United States and, due to their parentage and birth, Pakistan.⁶ At present, Applicant lives with his parents and siblings in their home. Given these facts, Disqualifying Conditions AG ¶¶ 7(a), (b), and (d) apply:

AG ¶ 7(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;

⁵ Although an identity card does not have either the significance or the cache of a passport, Applicant's relinquishment of this document would also meet the level of mitigation noted at Mitigating Condition 10(e): the passport has been destroyed, surrendered to the cognizant security authority or otherwise invalidated.

⁶ The SOR incorrectly alleges that Applicant has two sisters who are dual nationals. As noted above, one sister, who was born in the United States, is only a citizen of this country.

AG ¶ 7(b): connection 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

AG ¶ 7(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.

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. 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 collection operations against the United States; or terrorist factions exist in the country at issue. The risks associated with Pakistan are such to place the burden of persuasion on Applicant to demonstrate that his relationships with family members with a nexus to that country do not pose a security risk. At the same time, Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in foreign countries or maintaining foreign citizenship.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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 U.S., especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at 15-16 (App. Bd. Mar. 29, 2002).

Mitigating Condition AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns 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 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; and (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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows: Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) apply. There is no evidence that any of Applicant's relatives with foreign citizenship are dependent on a foreign nation, serve in a foreign military, or are involved with terrorist interests. Applicant's relationship with his elderly grandparents in Pakistan may be tender but it has been at arm's length for his entire adult life. While the facts presented do not show that Applicant is particularly close to his uncle, it is notable that he is currently seeking to immigrate to the United State with the sponsorship of Applicant's father. As for Applicant's mother and siblings of dual nationality, it is highly notable that these individuals, with whom Applicant cohabitates, have been United States citizens for about 15 years, settled in their lives in the United States, and have not demonstrated any interests in emigrating from this country. Given their family's reasons for pursuing a new life in this country, their acclimation to the United States, and their physical presence in this country, as opposed to Applicant's aged grandparents and immigrating uncle, Applicant has provided notable information to mitigate security concerns.

In contrast, AG ¶ 8(b) fully applies. A key factor in an AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in foreign countries or maintaining foreign citizenship. Applicant has spent the majority of his life as a United States citizen. He was educated in this country, started his professional career in the United States, and considers this to be his home. He enjoys life in this country cohabitating with his entire immediate, nuclear family. He does not proactively sustain relations with his relations abroad. Applicant has no plan to return to Pakistan and he is willing to relinquish his dual citizenship, just as willingly as he has remitted his Pakistan identity card to the appropriate officials. He has no financial or professional tethers abroad. Applicant's life, family, and profession are United States-based.

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). 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 incorporated my comments under the guidelines at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guideline, but some warrant additional comment.

Applicant is a young man who came to this country at age 10, following his father from Pakistan to the United States in search of a better life. He was educated in this country and built a life with his nuclear family in the United States. His aspirations for the future are based solely here. Both his Pakistan identity card and his status as a dual national are related to his birth abroad and actions he took during his minority. He has relinquished the identity card and is willing to take whatever steps are necessary to relinquish his status as a Pakistan citizen. His dual citizen status is the result of his birth; otherwise, he considers himself as a “normal American” who grew up in this country. Like his father, he enjoys the opportunities offered by this nation and the life he has made for himself. The tethers he maintains with his aged grandparents are warm, but long-distance. His distant relationship with his uncle may soon grow deeper after that relation immigrated to the United States. Otherwise, Applicant is devoted to his life and family here.

When disqualifying conditions are raised, the burden is placed on an Applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant presented sufficient information about himself, his family, and his actions to mitigate foreign preference and foreign influence security concerns. Clearance is granted

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge