



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-00299
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated alleged foreign preference security concerns, but her evidence is insufficient to mitigate foreign influence concerns. Her closest living relatives, her parents, are citizens and residents of Pakistan, which exposes her to the potential of adverse foreign influence from hostile armed groups that operate somewhat freely within parts of Pakistan. Granting her a clearance under the present circumstances, and thereby placing the security of this nation's secrets potentially at risk, would not be clearly consistent with the interest of national security. Clearance is denied.

Statement of the Case

On June 14, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to and contact with relatives and friends in Pakistan and her possession of a National Identity Card for Overseas Pakistanis (NICOP) raised security concerns under the foreign influence and foreign preference guidelines. Applicant answered the SOR and requested a hearing.¹

On April 12, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified and called a friend as a witness. The exhibits offered by the parties

¹ The SOR was amended at hearing to strike allegations 2.d – 2.g. See Transcript (Tr.) 42.

were admitted into the administrative record without objection.² The transcript of the proceeding was received on April 20, 2017, and the record closed on April 28, 2017.

Findings of Fact

Applicant, 27, was born in the United States. When her parents divorced, her mother decided to return to her country of birth, Pakistan, with her then 11-year-old daughter (Applicant). Applicant lived with her mother in Pakistan until she turned 18. She then moved back to the United States to go to college.

Applicant remained in the United States after graduating from college in 2014 and began her professional career as an engineer. She reconnected with old friends that she grew up with in the United States and made new ones through her school, job, and volunteer work. Currently, she is in a serious relationship with a young physician. She has turned her hobby in photography into a small business, selling her photographs online. Less than three years after graduating from college, Applicant's U.S. retirement and brokerage savings accounts reflect a balance of approximately \$30,000. She does not plan to move back to Pakistan, and anticipates her mother and stepfather will join her in the United States in the future.

Shortly before or after Applicant left Pakistan, her mother and stepfather applied for a NICOP for her, so she could return to Pakistan to visit them without the need or expense of requesting a visa. Also, the NICOP is in Urdu, which the local police generally understand better than identification documents in English. Applicant always retained her U.S. passport while living in Pakistan, and never applied for or obtained a Pakistani passport. She has not applied for or accepted any privilege or benefit of Pakistani citizenship derived through her mother beyond the NICOP. She surrendered the NICOP to her facility security officer in July 2016. She recently traveled to Pakistan to visit her mother and stepfather (hereinafter, collectively referred to as her "parents") using her U.S. passport and a visa.

Applicant's parents are citizens and residents of Pakistan. They married in 2001, when Applicant was about 16 years old. They plan on moving to the United States at some point in the future, but remain in Pakistan caring for Applicant's grandfather (stepfather's father). Applicant's stepfather served in the Pakistani military, including for some time in the Pakistani intelligence service. He retired from the Pakistani military nearly 30 years ago. He supports himself and his family financially through his Pakistani military retirement income and a stream of income through a private security business that he invested in some years ago. Applicant communicates frequently with her parents. She is not close to her other relatives in Pakistan. She submitted a security clearance application in 2015, in connection with her current employment and self-reported her foreign connections to Pakistan, including her then possession of the NICOP.

² Government Exhibits 1 – 5; Applicant's Exhibits A – R. The discovery letter, correspondence with the parties, the notice of hearing, and case management order were marked Appellate Exhibits I – IV.

Administrative Notice - The Islamic Republic of Pakistan (Pakistan).³

Pakistan is a federal republic. The United States has had diplomatic relations with Pakistan since its 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.

The September 11, 2001 attacks led to closer coordination between Pakistan and the United States on security and stability issues in South Asia. Notwithstanding recent efforts by the Pakistani military against terrorist and other extremist groups within Pakistan's borders, the United States remains concerned about these groups' ability to operate, plan, and conduct domestic, regional, and global attacks from safe havens within Pakistan. The presence of these groups in Pakistan poses 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 danger posed by the presence of these groups and other armed extremist elements.

Recent U.S. State Department reports reflect that serious human rights violations have occurred in Pakistan. These reports also reflect that corruption within Pakistani society remains a significant problem.

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 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 on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).⁴

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information "upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The

³ The matters accepted for administrative notice are taken from Exhibit 5, as updated by current U.S. State Department documents, namely, the State Department's fact sheet on U.S. relations with Pakistan (Jan. 24, 2017); travel warning (updated May 22, 2017); and 2016 human rights report on Pakistan (executive summary). These documents are publically available on the State Department's website (state.gov), and are appended to the record as App. Exh. V.

⁴ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards). I considered the previous version of the adjudicative guidelines that were in effect at the time the SOR was issued, and my decision would have been the same.

guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

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

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). *See also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

Analysis

Guideline C, Foreign Preference

A security concern arises when a person acts in such a way as to indicate a preference for a foreign country over the United States. Such action may indicate that the person may provide information or make decisions that are harmful to the United States. However, foreign citizenship by itself does not raise a security concern under Guideline C, unless the foreign citizenship is in conflict with U.S. national security interests or the

person attempted to conceal the information about his or her foreign citizenship. See *generally* AG ¶ 9. The facts and circumstances about how Applicant ended up obtaining and possessing a NICOP does not raise a foreign preference concern. She self-reported this information on her security clearance application. Accordingly, the Guideline C allegation is decided in Applicant's favor.

Guideline B, Foreign Influence

Foreign contacts and interests may 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. Likewise, a concern arises if a person's connections, contacts, or interests in a foreign country leave them vulnerable to pressure or coercion by any foreign interest. At the same time, a person is not *per se* disqualified from holding a security clearance because they have familial or other ties to a foreign country. Instead, in assessing a person's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.⁵

In assessing the security concerns at issue, I considered all the disqualifying and mitigating conditions listed under Guideline B, including the following:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(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;

AG ¶ 8(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 . . . and the interests of the United States;

AG ¶ 8(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;

⁵ See *generally* AG ¶ 6. See also ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

AG ¶ 8(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

AG ¶ 8(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.

An applicant with relatives in a foreign country faces a high, but not insurmountable hurdle, in mitigating security concerns raised by such foreign ties. An applicant is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”⁶ However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.⁷ Moreover, when an applicant’s foreign relatives reside in a country where elements hostile to the United States and its interests operate somewhat freely, such an applicant faces a *very heavy burden* in mitigating security concerns raised by their connections to and contacts with foreign relatives.⁸

Here, the record evidence reflects that Applicant has a strong relationship with her mother and stepfather. They are her closest living relatives and, although they are well off in Pakistan and live in a secure compound, the danger posed by terrorist and other hostile elements operating in Pakistan is a grave and ever present concern, as reflected in recent and past State Department travel warnings. In light of the dangerous conditions in Pakistan and Applicant’s close relationship to her parents, elements hostile to the United States could attempt to adversely influence her through her parents. Although Applicant has rebuilt strong personal, financial, and professional bonds to the United States since she returned to the United States, such is insufficient to fully mitigate the heightened security concerns raised by her present circumstances.⁹

However, I want to make it clear that this adverse security assessment is *not* a comment on Applicant’s patriotism or loyalty. Instead, it is an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

⁶ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

⁸ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

⁹ Specifically, I find that AG ¶¶ 7(a) and 7(b) apply. Although AG ¶¶ 8(b) and 8(e) have some limited applicability, these mitigating factors and the other favorable record evidence, including Applicant’s honesty and candor throughout the security clearance process, are insufficient to mitigate the heightened security concerns raised by her parent’s residence in Pakistan. Applicant’s connections to and contact with distant relatives and others in Pakistan is minimal and does not raise a security concern. SOR 2.c, which alleges these foreign connections, is decided in her favor.

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 (Foreign Preference):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraphs 2.d – 2.g:	Withdrawn

Conclusion

In light of the record evidence, it is not clearly consistent with the interest of national security to grant Applicant eligibility for access to classified information. Applicant's request for a security clearance is denied.¹⁰

Francisco Mendez
Administrative Judge

¹⁰ In light of Applicant's compelling mitigation case, I considered the exceptions listed in SEAD-4, Appendix C. However, none appear warranted at this time nor sufficient to lessen the serious security concerns at issue. See *generally* SEAD-4, ¶ E.3 and AG ¶ 2(h); *contrast with* ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011) (under previous version of the guidelines, judges had "no authority to grant an interim, conditional or probationary clearance.")