



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00140

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/30/2018

Decision

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

Statement of the Case

On June 29, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct).¹ In a letter dated July 26, 2016, Applicant answered the allegations raised in the SOR and requested a hearing record. I was assigned the case on April 19, 2017. On May 24, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for July 25, 2017. The hearing was convened as scheduled.

The Government offered 15 documents, which were accepted into the record without objection as Government Exhibits (GE) 1-15. The Government also offered what was taken into evidence and marked as Hearing Exhibit (HE) 1, a request for administrative notice regarding certain facts concerning the Islamic Republic of Pakistan (Pakistan), and HE 2, correspondence between the parties. Those documents were accepted into the record without objection. In addition, SOR allegation 1.e was amended to read that Applicant has five brothers-in-law who are citizens and residents of Pakistan, not two; allegations 1.h and 1.i were deleted and the allegations

¹ The action was taken under Executive Order 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) effective within the DOD on or after September 1, 2006. Since that time, the AG was amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017, the hearing date.

renumbered accordingly.² Applicant gave testimony. The transcript (Tr.) of the proceeding was received on August 11, 2017, and the record was closed. Based on a thorough review of the case file, I find that Applicant failed to carry his burden in mitigating security concerns.

Request for Administrative Notice

The Government requested that I take administrative notice of its proffer of information regarding Pakistan. I have thoroughly reviewed the information contained in HE 1 and hereby incorporate that information into my findings of fact.

Findings of Fact

Applicant is a 59-year-old security officer who has worked for the same entity since 2015. He earned a bachelor's degree in Pakistan. He is married. Applicant has three grown children, including one college graduate and two children pursuing degrees in the medical field. He is also a grandfather. Applicant has resided at the same address for over 18 years.

Applicant emigrated from Pakistan to the United States with his nuclear family in 1999. He became a naturalized United States citizen in September 2012. He formally renounced his Pakistani citizenship in August 2013. Around this same time period, he returned his Pakistan-issued passport to the proper authorities. (Tr. 18) Applicant last took one of his regular visits to Pakistan in 2016. He stayed with two of his brothers for about 20-25 days while visiting family.

In coming to this country, Applicant and his wife left behind several relatives in Pakistan. Applicant has two brothers who are citizens and residents of Pakistan. One brother, who is in his late 60s or early 70s, held a highly visible and significant office within the Pakistani government for many years before retiring. (Tr. 28) Applicant testified that he has not spoken to this brother for 15 years because the brother failed to help Applicant, financially or otherwise, when Applicant was in need of aid after he arrived in the United States. (Tr. 28-29) Applicant's second brother is a retired civil engineer who now runs a shop. He has no ties to a foreign government or military. Applicant speaks with this brother about once a year.

Applicant's third brother is a citizen of Pakistan living in the United States. This 62-year-old brother holds a highly visible and influential position in an international organization. Applicant stopped communicating with this sibling in about 2009, when the brother failed to help Applicant find work. (Tr. 31-32) Applicant's fourth brother is a citizen of Pakistan living in the United Arab Emirates (UAE), where he is a teacher. This sibling has no nexus to a foreign government or military. Due to the cost of phoning the UAE, Applicant only communicates with this brother every two or three years.

Also citizens and residents of Pakistan are Applicant's two sisters. Both women are homemakers with no connection to a foreign government or military. Applicant

² This amendment is noted in the transcript at page 27. The complete amendments on the SOR are made on the SOR in the official case file, including how the various allegations were renumbered.

speaks with them by phone once a year. Like the second and fourth brothers with whom he is on speaking terms, he visits with these sisters on his annual travels to Pakistan.

Applicant has five brothers-in-law who are citizens and residents of Pakistan. One works for a high profile international organization. (Tr. 35) Applicant last visited this in-law when he was in Pakistan, but they do not converse regularly by telephone. (Tr. 36) Two other brothers-in-law are self-employed doctors. Applicant does not call them by phone or, due to their location, visit them when he is in Pakistan. The other two brothers-in-law are a self-employed attorney and a small business owner, respectively. Applicant visits with them when he is in Pakistan. None of these brothers-in-law has a nexus to a foreign government or military. Applicant's one sister-in-law is a homemaker with whom Applicant has no contact. (Tr. 39) Applicant's mother-in-law, who is now old and infirm, socializes with Applicant when one of them visits the other's country. She also has no nexus to a foreign government or military.

One of Applicant's children is a dual-citizen of the United States and Pakistan. She sought Pakistani citizenship in order to reduce the cost of her graduate work in that country and of transit to and from Pakistan. (Tr. 41) She expects to complete her degree in 2018 and return to the United States. It is Applicant's wife, not Applicant, who maintains regular telephonic with this daughter.. (Tr. 42)

Applicant's wife owns a one-acre parcel of undeveloped land in Pakistan worth about \$200,000. It was originally purchased in 2010 for about \$35,000. Applicant's name is not on the deed. Should anything happen to Applicant's wife, the property would pass to Applicant and their children. (Tr. 43) Applicant's wife has tried unsuccessfully to sell the land in order to apply the proceeds to the mortgage on their family home here, but she has not yet received an acceptable offer.³ In addition, Applicant's wife and his sister managed a home in Pakistan, purchased in 1995 for about \$50,000. It now has an estimated value of about \$180,000. It became a rental property based on the exchange of clothing for housing, yielding about \$200 a month in income. Applicant and his wife lost ownership of the property in 2007. (Tr. 44-46)

On or about March 20, 2014, Applicant completed a security clearance application (SCA). In response to Section 13A, Applicant answered "no" when queried about a particular past employment position: *For this employment have any of the following happened to you in the last seven (7) years? Fired – Quit after being told you would be fired – Left my mutual agreement following charges or allegations of misconduct – Left by mutual agreement following notice of unsatisfactory performance.* In fact, Applicant failed to disclose that he had been fired on or about April 4, 2012, for misconduct while serving as a patrol.⁴ (Employment Records, Ex. 14 at 15; see also Tr.

³ Because it is known Applicant's wife and her family live in the United States and, most likely, want to sell, local buyers tend to offer only about half of the land's worth. (Tr. 44) "She is waiting for the good prices." (Tr. 44)

⁴ That document, a final written warning, states that Applicant tested positive for the use of benzodiazepine, a tranquilizer. He explained to the human resource department that he had taken one of his wife's prescription drugs, Xanax, on March 17, 2012. He later detailed that the consumed tablet was from a prescription written for him and filled four years prior. Regardless, he was terminated for cause, not laid off, as he had reported.

48-50) Rather, he wrote on the SCA that he had been subject to a layoff. (Ex. 1 at 18 of 57) Applicant has since admitted that he was not terminated through a layoff, as he had reported. (Tr. 50-51)

Also in response to Section 13A, Applicant answered “no” when queried about a particular past employment position: *For this employment have any of the following happened to you in the last seven (7) years? Fired – Quit after being told you would be fired – Left my mutual agreement following charges or allegations of misconduct – Left by mutual agreement following notice of unsatisfactory performance.* In fact, he had not disclosed that he was terminated on or about August 9, 2010, from a position as a security officer at a security firm. (see also Ex. 1 at 17 of 57; Ex. 15)⁵ Instead, he wrote that he had left this position for a better job. (Ex. 1 at 19 of 57) To date, he maintains he was neither advised in writing or verbally that he was terminated. (Tr. 67)

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 adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, 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 in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, 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 and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information.

⁵ Ex. 15 reflects that Applicant was dismissed after failing to file a report regarding fire alarms that had gone off. This led to his employer losing a contract and Applicant’s termination. (see also Tr. 65-66)

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence 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. citizen to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant has natural ties of affection with multiple family members who are citizens and residents of Pakistan. He also has property interests in that country. I find disqualifying conditions AG ¶¶ 7(a), (b), and (f) apply:

AG ¶ 7(a) 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(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; and

AG ¶ 7(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, and find the following to have the most potential applicability:

AG ¶ 8(a) the nature of the relationship 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.;

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 interests in favor of the U.S. interests;

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(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.

The mere possession of close family ties to a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

Here, Applicant has severed contact with two brothers and has reduced or eliminated regular communication with his family and in-laws. However, he continues telephonic communication with some of his siblings, and, most noticeably, he enjoys lengthy and regular visits as a guest in Pakistan with two of his brothers. While Applicant may depict relationships continued with minimal contact, it is apparent he still maintains understandable feelings for them. Moreover, while Applicant may, at present, consider two of his brothers to be cut out of his life, familial relations are unpredictable and static, especially amongst siblings. This fact could have considerable effect given that the two brothers are highly visible men noted in the international community, especially since how those gentlemen view Applicant is unknown.

Furthermore, Applicant gave considerable detail about his kin abroad, but offered scant information about his family and home life in the United States. Consequently, it is difficult to weigh, for example, his feelings about his foreign relations against his feelings about his family here in the United States. At best, he noted that he has three grown children and that he leaves telephonic conversation with his daughter overseas to his spouse. Little else was discussed regarding his wife, his children, his home, activities in his community, work, and domestic investments. Such considerations make it difficult to fully raise AG ¶ 8(a) or AG ¶ 8(b).

On the other hand, Applicant has explained that he and his wife no longer own the house in Pakistan with an estimated value of \$180,000. In terms of property holdings, that only leaves his wife's lot with an estimated value of \$200,000. While Applicant explained reasons why she has not been able to sell the land for that price, it appears that remains his wife's target price for disposing of the property. Consequently, it appears Applicant and his family have Pakistani holdings worth about \$200,000. In

contrast, Applicant gave little information regarding his domestic finances and interests. However, it appears from other factors – such as his children’s academic achievements and aspirations – that Applicant’s holdings here, along with the presence of most of his nuclear family in the United States, tip the scale of any potential conflicts of interest in favor of the United States. I also note that Applicant’s wife is in no hurry to sell the property, which can safely be construed that money is a high priority. Therefore I find AG ¶ 8(f) applies.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified or sensitive information.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying. Here, Applicant denied having been fired from a job in 2012 and being terminated in 2010 on a SCA question inquiring as to reasons for departures from jobs. Therefore, if his answer was a falsity, the following disqualifying condition could apply:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he was not, as he disclosed on his SCA, laid off from his security position in 2012. Consequently, without more, it cannot be deduced that his answer was anything but a fraud or deliberate omission. Moreover, Applicant claimed on the SCA that he had moved on to a better job in 2010, when the documentary evidence clearly shows that he was terminated after being written up for failure to make a required report. Here, however, Applicant does not openly admit a deliberate obfuscation or lie. His concession regarding the 2012 incident, however, is more than sufficient to give rise to AG ¶ 16(a).

Under AG ¶ 17, conditions that could mitigate security concerns include:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made

aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

AG ¶ 17(f) the information was unsubstantiated or from a source of questionable reliability; and

AG ¶ 17(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

While it is conceivable that Applicant was unaware of all of the conditions surrounding his 2010 dismissal, he admits that his answer regarding his 2012 termination was fundamentally untrue. This is tantamount to intentional falsity, a characteristic that undermines the fundamental relationship between the government and an applicant. None of the mitigating conditions noted above apply, especially after only four years since he completed his SCA and tried to obfuscate why he was terminated from his position in 2012.

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 in the AG. 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. Some of the factors related to the whole person concept have already been discussed, but some warrant emphasis.

Applicant is a 59-year-old security officer who has worked for the same entity since 2015. This period of employment follows two other security positions, jobs from which he was terminated for cause in 2012 and 2010. Applicant has earned a bachelor's degree. He is married and has three grown children.

Applicant emigrated from Pakistan to the United States with his nuclear family in 1999. He became a naturalized United States citizen in September 2012 and formally renounced his Pakistani citizenship in August 2013. Applicant is happy with his life in the United States, and there is no indication that he is anything but loyal to this country.

While an applicant is not barred from having foreign relations who are citizens and residents of a foreign nation, including one like Pakistan, Applicant's extended family and his daughter's current residence in Pakistan raise concerns. Although he minimizes his contact with his multiple family members and in-laws, he also gives examples of why some contact is minimal for reasons other than emotional (ie., the cost of an international telephone call, the relinquishment of contact with a child to his wife). In addition, it is unknown whether his highly recognizable relations with whom he is not speaking may not come back into his inner circle, as things often occur amongst siblings. While issues surrounding Applicant's foreign property interests were sufficiently addressed, Applicant failed to mitigate foreign influence security concerns raised by his familial ties to Pakistan..

Of higher concern in this specific case is the lack of candor Applicant demonstrated in completing his 2014 SCA. Applicant intentionally withheld the truth when he wrote that he was subject to a layoff in 2012 when, in fact, he was terminated for cause. Applicant admits he was not subject to a layoff, making it more obvious that his answer was purposefully untruthful. He also tried to disguise a 2010 termination as a voluntary departure based on his acceptance of a better job. While Applicant argues that he was never informed, orally or in writing, of his termination – an argument that stretches credulity – there is no reason to question his credibly articulated explanation given the ultimate disposition in this case. In sum, I find that Applicant also failed to mitigate personal conduct 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge