



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



In the matter of: )  
)  
) ISCR Case: 16-02979  
)  
Applicant for Security Clearance )

**Appearances**

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

November 8, 2017

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of Case**

On October 15, 2014, Applicant submitted a security clearance application (SF-86). On November 17, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. (Item 1.) The action was taken under Executive Order 10865 (EO), *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*, dated September 1, 2006.

Applicant answered the SOR on January 9, 2017. He admitted all the allegations of the SOR with explanations. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On February 9, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant

on February 10, 2017, and received by him on February 26, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. Items 1 through 4 are admitted into evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Procedural Rulings**

In the FORM, the Government requested I take administrative notice of certain facts relating to Pakistan. Department Counsel provided a six-page summary of the facts, supported by four Government documents pertaining to Pakistan, identified as Item 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant is 48 years old. (Item 2 at page 5.) He is married, with three children. (Item 2 at pages 23, and 28~29.) He attended technical school in the United States, and served in the U.S. Army Reserve for five months. (Item 2 at pages 11 and 21.) He has worked for his employer since September of 2014. (Item 2 at page 13.)

### **Guideline B – Foreign Influence**

1.a. Applicant's 40 year-old spouse is a citizen of Pakistan, and a resident of the United States. (Item 2 at pages 23~24.) She "is a house wife and has no employer." (Item 3 at page 8.) At the time of Applicant's March 2016 "Enhanced Subject Interview," (ESI) she had "been issued" a U.S. "alien Registration Card." (*Id.*) Furthermore, his spouse "is not known to have any direct affiliation with a foreign government, including Pakistan." (*Id.*)

1.b. Applicant's two brothers are citizens and residents of Pakistan. His oldest brother is 56 years old, and "is self-employed selling garments." (Item 3 at page 4.) Any

employer this brother might have; would be his “clients,” who are unknown to Applicant. (*Id.*) Applicant “has phone contact with his brother 4 or 5 times a year.” (Item 3 at page 4.) There is no evidence that this brother, apart from his citizenship, has any connection with a foreign government.

Applicant’s other brother is 54 years old, but “he [Applicant] doesn’t know how he is employed.” (Item 3 at page 4.) Applicant “has phone contact with his brother 4 or 5 times a year.” (*Id.*) There is no evidence that this brother, apart from his citizenship, has any connection with a foreign government.

1.c. Applicant’s 52-year-old sister is a citizen of Pakistan; but resides in the United Kingdom, not in Pakistan as alleged. (Item 3 at page 4.) “She is a house wife and is not employed outside the home.” (*Id.*) He “has phone contact with his sister once a month.” (Item 3 at page 4.) There is no evidence that his sister, apart from her citizenship, has any connection with a foreign government.

1.d. Applicant’s parents-in-law are citizens and residents of Pakistan. (Item 3 at pages 4~5.) His 70-year-old father-in-law “was self-employed exporting work gloves to the US and is now retired.” (Item 3 at page 5.) He “has phone contact with his father-in-law once a month.” (*Id.*) There is no evidence that his father-in-law, apart from his citizenship, has any connection with a foreign government.

Applicant’s 66-year-old mother-in-law “is a house wife and is not employed outside the home.” (Item 3 at pages 4~5.) He “has phone contact with his mother-in-law once a month.” (Item 3 at page 4.) There is no evidence that his mother-in-law, apart from her citizenship, has any connection with a foreign government.

1.e. The ESI noted one friend of Applicant who is a citizen and resident of Pakistan. (Item 3 at page 5.) Applicant “has phone contact 4 or 5 times a year,” but does not “know how he is employed,” (*Id.*) There is no evidence that this friend, apart from his citizenship, has any connection with a foreign government.

I take administrative notice of certain facts relating to Pakistan: The State Department warns U.S. citizens against all non-essential travel to Pakistan. While al-Qa’ida’s presence in Pakistan has been seriously degraded, it remains a threat. Pakistan also has serious human rights problems. (Item 4 at pages 1~6.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 adverse 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) (listing multiple prerequisites for access to classified or sensitive information).

## 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. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (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; and
- (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.

Applicant's spouse, parents, parents-in-law, three siblings, and a friend are citizens of Pakistan. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;

(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; 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.

There is absolutely no evidence that Applicant's foreign relatives and his friend have any connection with the Pakistani government. Apart from his U.S.-resident wife, his contact with them is not unreasonable. Applicant served in the U.S. Army Reserve, and now serves his country as a "consultant." (Item 2 at page 13.) I find it highly unlikely he will be placed in a position of having to choose to act against U.S. interests vis-à-vis his foreign relatives or his friend. Foreign Influence is found for Applicant.

### **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(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has met his burden to mitigate the security concerns arising under the guideline for Foreign Influence.

### **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: FOR APPLICANT

Subparagraphs 1.a. through 1.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 national security eligibility and a security clearance. National security eligibility is granted.

Richard A. Cefola  
Administrative Judge