



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



In the matter of:)
)
) ISCR Case No. 16-03047
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2018

Decision

MURPHY, Braden M., Administrative Judge:

Despite Applicant's service as a linguist with U.S. forces, he has significant family connections to Pakistan that remain a security concern under Guideline B, foreign influence. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 17, 2016. On July 22, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under foreign influence.¹

¹ The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG), effective June 8, 2017.

Applicant answered the SOR on August 5, 2016, and requested a hearing. The case was assigned to me on September 27, 2017. The same day, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing for October 4, 2017, with the agreement of both parties.² The hearing convened as scheduled. Government Exhibits (GE) 1-4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record closed on the date of the hearing. DOHA received the hearing transcript (Tr.) on October 12, 2017.

Request for Administrative Notice

The Government submitted a written request that I take administrative notice of certain facts about Pakistan. (GE 5) Without objection, I have taken administrative notice of certain facts contained in the request that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

Amendment to the SOR

Department Counsel moved to withdraw SOR ¶ 1.b. The motion was granted without objection. (Tr. 13)

Findings of Fact

Applicant admitted SOR ¶¶ 1.c-1.h and 1.j. He denied SOR ¶¶ 1.a and 1.i, all with narrative explanations. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He was born in Afghanistan in 1961. Between 1975 and 1983, he mostly lived in Pakistan while attending high school and college. He returned to his home in Afghanistan after he graduated. (Tr. 35-38; GE 3)

Between 1984 and 1989, he was arrested three times by Afghan intelligence; twice for speaking out against communism, and once, in 1989, for aiding the Mujahedeen rebels in their fight against Soviet forces. After his last arrest, he was imprisoned for a year, and tortured in prison. (Tr. 36, 52-54; GE 3)

In 1990, Applicant escaped and joined his parents and siblings, who had gone to Pakistan. With his family's help, he was smuggled out of Pakistan in late 1990. He eventually settled in the United States, where he sought and received political asylum in 1991. (GE 3)

² Applicant requested expedited processing. He waived his right to 15-days' written notice of the hearing date. (Answer; Tr. 6-7)

Applicant returned to Pakistan for about six months in 1992-1993 to visit his family and to get married. But for occasional visits to Pakistan to see his wife and family and his deployments to Afghanistan, he has lived in the United States ever since. (GE 1, GE 3)

Applicant became a permanent U.S. resident in 1993, and became a U.S. citizen in January 2001. His wife remained in Pakistan until 2001, when Applicant could sponsor her, and their first two children, into the United States. A daughter, age 24, and a son, age 18, were born in Pakistan, and two sons (ages 16 and 7) were born in the United States. Applicant's wife and their four children are all U.S. citizens and residents. His sons are in college, high school and elementary school, respectively. (Tr. 35-38, 41-44, 49-50, 60-63; GE 1, GE 3)

Applicant was deployed to Afghanistan as a linguist supporting the U.S. military between February 2006 and September 2007. After returning to United States, Applicant was then largely unemployed until taking another linguist position in August 2008 at a U.S. military base, where he worked until May 2010. He then held several other linguist positions until July 2015. He was laid off because his clearance was pending. He was unemployed until accepting his current position, again as a linguist, in April 2016. He deployed to Afghanistan from August 2016 to September 2017. During this deployment, he was in a military vehicle that rolled over when it went off the road and into a ravine. He was treated for neck pain and examined for other injuries. He was to return to Afghanistan in October 2017. (Tr. 73-78; GE 1, GE 3; AE D)

Applicant reported on his SCA that he had been granted security clearances in October 2007 and November 2009. He reported that in June 2015, the re-adjudication of his clearance was halted due to a lack of jurisdiction because his employer lost its contract. (GE 1 at 53-56) Several of his references indicated in recommendation letters that Applicant formerly had a security clearance. (AE A)

In 2009, federal law enforcement authorities investigated Applicant for possibly falsifying translations while working as a linguist at a U.S. military base. Applicant allegedly contemplated not properly translating certain material because of his personal political beliefs and because of his faithfulness to his Pakistani heritage. (SOR ¶ 1.a). However, the investigation developed no derogatory information about Applicant, and it was closed in early 2010. (GE 2). There is no indication that Applicant's employment was impacted as a result of the investigation.

Applicant strongly denied SOR ¶ 1.a. In his Answer, he noted first that his heritage is Afghan, not Pakistani, and he does "not hold any beliefs supportive of Pakistan, its government, or its interests." He also asserted that he had always acted with "fidelity and allegiance" to "my adopted country, the United States." He cited his long service as a linguist and regional specialist on numerous deployments with U.S. forces, and during several assignments in the United States. (Answer) He denied that he ever improperly translated material, and denied that he ever considered doing so. (Tr. 38-39, 78-79; AE B)

Applicant's daughter is studying medicine in Pakistan. She was in a residency program there at the time of the hearing. (SOR ¶ 1.d) Applicant testified that he expected that she would return to the United States to continue her career once the residency program finished, in about February 2018. Applicant has provided financial support to his daughter during her studies. (Tr. 41-42, 63; Answer)

Applicant's brother and sister remained in Pakistan after they left Afghanistan. They are both dual Afghan-Pakistani citizens. (SOR ¶¶ 1.c, 1.e) Both married Pakistani citizens. Applicant's brother, age 63, is an administrator with Pakistan's Ministry of Education. He has never returned to Afghanistan. Applicant is sponsoring U.S. immigrant visa applications for both of his siblings. (Tr. 42, 56, 93-96; GE 1; Answer)

Applicant's daughter stays with his sister in Pakistan during school breaks. Applicant occasionally sends his sister money, either to further her children's education or to defray the costs of lodging his daughter. In 2013, he wired his brother-in-law about \$9,600. Applicant testified that he has sent his sister about \$1,500 in the last three years. He is in contact with his sister on at least a monthly basis. (Tr. 46-47, 96; GE 4) (SOR ¶ 1.h)

Applicant's brother-in-law is an officer in the Pakistani Army. Applicant testified that he has little contact with his brother-in-law. Applicant's wife is in regular contact with him and is sponsoring his U.S. immigrant visa. (Tr. 43, 57-59, 93-95; Answer) (SOR ¶ 1.d)

Applicant's mother-in-law and father-in-law are citizens and residents of Pakistan. (SOR ¶ 1.g) They are elderly and in poor health. Her father is a farmer. Applicant's wife also has a brother in Pakistan. He is physically disabled. (Tr. 65; Answer) Applicant's wife is in regular contact with her parents, and visited her family in Pakistan three weeks before the hearing. Applicant has not been to Pakistan since 2011. (Tr. 69, 93-95)

Applicant's in-laws gave his wife a home in Pakistan when she and Applicant were married. Applicant denied any co-ownership of the home, and said his wife was the sole owner. His wife uses the home when she returns to Pakistan for family visits. (SOR ¶ 1.i) (Tr. 47, 66-67) When his parents died, Applicant and his siblings inherited a home they owned in Pakistan. (SOR ¶ 1.j) The home is next door to the home Applicant's wife owns. Applicant's brother stays there when he visits the village. Applicant would have a right to a share of the proceeds if the property were sold. (Tr. 66-68; Answer) Applicant testified that the alleged values of the two properties (\$13,000 and \$7,000) are estimates, as he has never seen any documentation about them. (Tr. 84-85; GE 1 at 42-45)

Applicant and his wife rent their home in the United States. They do not own any real property in the United States. He testified he has between \$5,000 and \$7,000 in U.S. bank accounts. His only other significant asset is a car. He earns between \$85,000 and \$100,000 as a linguist. His wife works in a department store. (Tr. 70-71, 83-84)

Applicant provided letters of recommendation from several members of the U.S. military who have served “shoulder to shoulder” with him on deployments, several of them in cleared positions. They praised Applicant as an excellent translator who needed little oversight. He participated in multiple combat patrols and sensitive missions. He was an integral part of the mission and provided vital support to U.S. warfighters in the global war on terrorism. He maintained a “calm professionalism” in the face of adversity. Military personnel who served with him highly recommend him for a position of trust and responsibility. One of them called Applicant “the finest Pashtu linguist I have ever had. His extraordinary language and interpersonal skills sets him far apart from his peers.” Applicant has also endured repeated separations from his family, whom he cares for deeply. Applicant also provided voluntary religious leadership in his community, both on deployments and in his community at home. (AE A)

The Islamic Republic of Pakistan (Pakistan)³

The United States has had diplomatic relations with Pakistan since Pakistan’s 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 remains concerned about the continued presence of terrorist and other extremist groups in Pakistan. These groups operate, plan, and conduct domestic, regional, and global attacks from safe havens within Pakistan. The Pakistani military undertook operations to eliminate those safe havens. Although those operations had a significant impact, terrorist organizations continue to operate with Pakistan. Pakistan continues to experience significant terrorist violence. Throughout Pakistan, foreign and indigenous terrorist groups continue to pose a danger to U.S. citizens. The U.S. State Department advises American citizens against all non-essential travel to Pakistan due to the risk of terrorism and the potential for armed conflict.

The State Department’s 2016 human rights report on Pakistan reflects the reported commission of human rights violations by elements within Pakistan and the Pakistani government. The reports also note that the most serious human rights problems in Pakistan include extrajudicial and targeted killings, disappearances, torture and lack of rule of law, and sectarian violence. Government corruption is a serious problem and the lack of accountability and failure to prosecute these abuses has led to a culture of impunity.

Policies

It is well established that no one has a right to a security clearance.⁴ As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. at 531.

³ GE 5, as updated by recent, reliable information on the U.S. State Department website.

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The adjudicative 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 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.

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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 Exec. Or. 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."

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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;

(e) shared 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; and

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

AG ¶¶ 7(a), 7(e) and 7(f) require evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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.”⁵

Applicant has several immediate family members who are citizens and residents of Pakistan. This includes his brother and sister, their spouses, and his wife’s parents. Applicant has two relatives who are employed by Pakistan’s government, one of whom

⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

is a military officer. Applicant's daughter, a dual U.S.-Pakistani citizen, has been studying medicine in Pakistan, though she expects to return to the United States soon. Applicant has provided some financial support to his family members, namely his sister. Pakistan's serious human rights issues, the ongoing threat of terrorism there, and the government's inability to stem corruption all create a "heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b) and 7(e) have been raised by the evidence.

Federal law enforcement authorities investigated Applicant for possibly falsifying translations in 2009. No derogatory information about Applicant was developed, and the investigation was closed in early 2010. There is no indication that Applicant's employment was affected. Applicant denied SOR ¶ 1.a, which shifted the burden to the Government to establish its security significance. SOR ¶ 1.a is rebutted and not established.

Applicant's wife received a home from her parents at the time of her marriage. Applicant has a small share in a home that passed to him and his siblings when his parents died. Applicant estimated that the combined value of these properties is about \$20,000. This is not a substantial financial interest, especially when compared to the \$85,000 to \$100,000 annual salary Applicant testified he has earned as a linguist. AG ¶ 7(f) does not apply. Alternatively, it is mitigated under AG ¶ 8(f), below, for the same reasons.

It is not disqualifying under Guideline B for an Applicant to send money to foreign family members, even though doing so may be evidence of a familial bond. SOR ¶ 1.h is therefore found for Applicant.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(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;

(c) contact or communication with foreign citizens is so casual or 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 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.

Applicant's daughter is a U.S. citizen. This lessens the risk of exploitation, coercion, or duress because she can return to the United States in the event she is subjected to foreign pressures. She is also soon to return to the United States to pursue her medical career. However, at the close of the record, she remained in Pakistan, so security concerns remain.

Applicant and his wife have several immediate family members who are citizens and residents of Pakistan, including two family members who are employed either by the Pakistani government or military. In light of the matters accepted for administrative notice, AG ¶ 8(a) has limited applicability.

Applicant has frequent and regular contact with his sister and his daughter. He is also seeking to sponsor his siblings into the United States. He has little direct contact with his wife's family. However, his wife has regular contact with her family members, maintains a small home there, and visited them in Pakistan recently. She is also seeking to sponsor her brother into the United States. AG ¶ 8(c) does not apply.

Applicant came to the United States in 1991 and has largely been here ever since. He has created a life for himself in the United States. His wife and children are long-time U.S. citizens and residents. Applicant has not visited Pakistan since 2011.

Applicant has also spent significant time as a linguist, both working stateside and on deployments overseas assisting U.S. military forces with his language expertise and his knowledge of the region. His character witnesses attest to his professional and interpersonal skills and his dedication. He was integral to the mission and provided vital support. He served in combat missions and on sensitive assignments, at great personal risk. I give this evidence significant weight.

However, Applicant continues to have strong family connections to Pakistan. His brother is a Pakistan government employee, and his brother-in-law serves as an officer the Pakistani military. His daughter is an American citizen but she stays with Applicant's sister and brother-in-law on breaks from school. His wife's parents remain there. These circumstances increase the heightened risk shown given the established security concerns about Pakistan. Applicant and his wife each maintain property interests there. While the financial value of the homes is not significant, the mere fact of the homes themselves shows Applicant's ongoing connection with Pakistan. Applicant testified that he and his wife have applied to bring their family members to the United States. However, at the close of the record, they remained in Pakistan. They therefore remain

potentially vulnerable to foreign pressures. Applicant has not met his burden of persuasion in establishing that AG ¶ 8(b) applies.

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 the 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.

Under AG ¶ 2(a), 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 have incorporated my comments under Guideline B in my whole-person analysis. I observed Applicant's demeanor while he testified. Applicant was an impressive and candid witness. Applicant presented a strong case in mitigation and in support of his request for access to classified information. However, the fact that he has several family members remaining in Pakistan remains a security concern. After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), I find that Applicant has not mitigated the heightened concerns raised by his family connections to Pakistan.

As the Appeal Board has stated,

This is not to suggest that Applicant is disloyal or that [he] is other than a person of excellent character. However, common sense and a knowledge of the ways of the world suggest that even those whose character is unimpeachable could be faced with circumstances that would seriously tempt them to place the safety of [family members] ahead of other competing interests.⁶

⁶ ISCR Case No. 14-02563 at 5-6 (App. Bd. Aug. 28, 2015).

The record evidence therefore leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline B, foreign influence.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c-1.g:	Against Applicant
Subparagraphs 1.h-1.j:	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 security interests of the United States to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge