



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00685

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

03/26/2018

Decision

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

Statement of the Case

On April 25, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline F (Financial Considerations).¹ In a letter dated May 18, 2017, Applicant answered the allegations and requested a determination based on the written record. On June 21, 2017, the Government issued a File of Relevant Material (FORM) with seven attachments ("Items"). The case was assigned to me on October 1, 2017. Based on my review of the record as a whole, I find Applicant mitigated foreign influence and financial considerations security concerns.

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, revisions have been made to the AG for any adjudication on or after June 8, 2017. The revised AG is applied here.

Request for Administrative Notice

The Government requested that I take administrative notice of its proffer of information regarding Pakistan. Having reviewed the information² contained in the FORM at Item 7, I find the following:

The Islamic Republic of Pakistan is a federal republic made up of an executive, a legislative, and a judicial branch, whose powers and limitations are contained in a national constitution. The legislature is comprised of representatives in a bicameral parliament chosen through open elections from a multi-party system. A president, prime minister, and appointed cabinet members make up the head of the executive branch. Supreme court justices are appointed by the executive to oversee a common law legal system influenced by Islamic Sharia law.

Most of Pakistan's western border abuts Afghanistan. To the southwest, it shares a border with Iran. Extensive terror networks operate along the border with Afghanistan in the Federally Administered Tribal Areas (FATA) along the central Afghanistan border, in the Khyber Pass region in northwest Pakistan, and in Balochistan Province in southwest Pakistan. Chief among these networks are the Taliban, the Haqqani, and al-Qaeda. They operate in many cases without meaningful interference from the Pakistani government, and their activities consist of anti-U.S. and anti-coalition military operations across the border into Afghanistan. The FATA, and other areas mentioned above, provide safe havens from which terrorists have been able to plan and launch attacks on U.S. and coalition troops and interests in Afghanistan. Bombings and other acts of terror also have been reported throughout Pakistan, but the main focus of terrorist activity in Pakistan consists of attacks in urban areas, such as the capital city of Islamabad. Because of this information, the U.S. Department of State has issued numerous travel advisories and warnings to U.S. citizens considering traveling to Pakistan.

The United States and Pakistan have had diplomatic relations since Pakistan obtained its independence in 1947. The countries' interests have been in general agreement for much of that time. Starting in 2001, Pakistan helped the U.S. in its global war on terrorism and has helped capture hundreds of Taliban and Al-Qaeda personnel. However, efforts to deny areas adjacent to Afghanistan as safe havens for terrorist organization have not been as effective as the U.S. would like. Another issue related to terrorist activity in Pakistan is the fact that Pakistani government and military entities have committed numerous human rights violations in the name of counter-terror operations and investigations. Extra-judicial killings, arbitrary arrests without access to due process, and other human rights problems are commonplace.

Findings of Fact

Applicant is a 36-year-old system administrator who has worked for the same defense contractor since 2009. He is married. He has not pursued any scholastic

² In addition to the offered information contained in the FORM at Index 7, I also referred *sua sponte* to the CIA World Fact Book page regarding Pakistan, found at www.cia.gov.

education in the past decade. At age 18, he moved to this country from Pakistan and was naturalized an American citizen in November 2005. His wife, a registered alien, is also originally from Pakistan. They married in 2013, but have lived here as a couple since 2015. Applicant has no foreign investment or accounts. Applicant's father is deceased. Applicant's mother and brother live in his house, and are registered U.S. aliens. His married sister is a United States citizen and lives in another state.

Applicant's in-law are citizens and residents of Pakistan, living near Applicant's place of birth. Applicant met his in-laws on his wedding day in Pakistan. His mother-in-law is a housewife with no foreign government contact. Applicant's father-in-law is a painter working for a company. He also has no foreign government contact. Applicant has no contact with his in-laws. It may be assumed his wife maintains some level of contact with her parents. Applicant provides no financial support to his in-laws.

When the April 2017 SOR was issued, two of Applicant's accounts had been identified as delinquent. The first, at allegation 1.a, was an account placed in collection with a balance of approximately \$18,620. Much of this balance is related to Applicant's 2013 nuptials. As noted in the FORM, Applicant had been working with a debt consultant (DC) through a collection consultant (CC, INC) to arrange a settlement program for the debt with this lender (COLLECTION ACCOUNT).

As evidence, Applicant introduced documentation reflecting that the debt was authorized to be settled for less than the full balance. An October 2016 was designed to settle the debt upon payment of 22 monthly payments of \$675. What was lacking at the time Applicant responded to the SOR was evidence of the agreement terms and a nexus between the identified DC and the COLLECTION ACCOUNT lender noted in allegation 1.a.

Applicant provided that nexus in response to the FORM with his submission of the written authorization of CC INC, by the COLLECTION ACCOUNT creditor, to settle the debt for \$15,515.21 after a down payment of \$665.21 and 22 monthly payments of \$675. (Response to FORM at 8) In addition, Applicant provided a printout from DC of the agreed upon payment schedule, which was noted as having a commencement date on December 23, 2016 with the payment of a negotiation fee. Payment of that fee was to be followed with 22 monthly payments of \$675, transacted each month from January 2017 through October 2018. (Response to FORM at 9-10) Documentary evidence of payments on that schedule was offered in the SOR Response, reflecting payment of the \$665.21 down payment and payments for January, February, March, and April 2017, which was the month Applicant received the SOR.

At issue in SOR allegation 1.b was a charged-off account in the approximate amount of \$5,733. This account concerned a balance on a vehicle over which Applicant was in disagreement. As noted in the FORM, Applicant negotiated a settlement with the lender to satisfy the debt upon payment of \$4,013.33 in May 2017. A facsimile transmission copy of a letter was transmitted on May 17, 2017, reflecting that payment

of the settlement amount (\$4,013.33) had been received and the account was considered to be settled in full. (SOR Response)

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. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All reliable information about the person must be considered in making a decision.

The protection of the national security is the paramount consideration. Any 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.

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. The ultimate burden of persuasion to obtain a favorable security decision is on an applicant.

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 the applicant may deliberately or inadvertently fail to safeguard protected information.

Analysis

Guideline B – Foreign Interests

Under the AG, foreign contact 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 be made vulnerable to pressure or coercion by any foreign interest.

Assessment of foreign contact and interests should consider the country in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Here, given that Applicant has in-laws who are foreign nationals living abroad, I find the following apply:

¶ 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, and

¶ 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.

Under ¶ 8, three mitigating conditions are potentially applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country 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; and

¶ 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.

At the onset, I note that Applicant's parents-in-law are residents and citizens of Pakistan, a country posing both risks to its citizens and travelers, but which is also a longtime partner with the United States in many areas concerning security and the fight against international terrorism. Applicant detailed that his in-laws, with whom he has personally had scant contact, have no nexus to a foreign government. Applicant's mother-in-law is a homemaker, while his father-in-law is a painter working for a commercial concern. There is no suggestion that they work for or are involved with foreign agents, nor is there an indication they are under observation by a foreign government.

Meanwhile, the living members of Applicant's immediate family are all here in the United States. As well, his mother and brother live under Applicant's roof, and his sister

is married, settled, and living in another state. Applicant's home is here, which he shares with his wife. He has lived in this country his entire adult life, has built a career here, and has worked for the same employer for nearly a decade. He has no investments anywhere but here. Under these facts, I find ¶ 8(a)-(b) apply.

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

Here, Applicant was shown to have had two delinquent debts amounting to about \$24,000. This is sufficient to raise the following disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant showed that the delinquent debt at SOR allegation 1.a, the largest debt, had already been subject to a reasonable settlement in repayment for about four

months when the SOR was issued. The lesser of the two delinquent debts was addressed and satisfied within a month of Applicant's receipt of the SOR. His actions and methods reflect that he has an understanding of basic finance, and they also show he knows how to resort to financial experts when needed. Under these facts, I find that AG ¶ 20(d) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed in the AG. Under 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 guideline at issue in my whole-person analysis. That analysis includes the fact that Applicant is a 36-year-old system administrator who has worked for the same defense contractor for nearly a decade. Married, he came to this country at age 18 and became a naturalized United States citizen in 2005. He married a lady from Pakistan in 2013, and the couple has been settled in Applicant's home for several years.

Living with them is Applicant's mother and brother, while Applicant's sister has married and settled in a distant state. Remaining in Pakistan are Applicant's in-laws, a homemaker and a painter with no nexus to a foreign government. Applicant has virtually no communication with them, although it may be assumed his wife maintains some degree of contact with them. Despite this connection, Applicant's wife, immediate family, profession, home, and holdings are in the United States, where he has entire adult life.

Regarding two delinquent accounts, Applicant presented documentary evidence reflecting his actions in addressing these debts. He showed that one was settled for a slightly reduced amount and a payment plan instituted before he received the SOR. The less debt was satisfied in full within a month of his receipt of that document. In sum, Applicant has responsibly addressed his two delinquent debts. Based on the foregoing, I find Applicant mitigated security concerns related to foreign influence and finances.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraph 2.a-2.b: 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