



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No.: 17-00815
)
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Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

May 7, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the foreign influence security concerns raised by his connections to family members who are citizens and/or residents of Pakistan. His request for a security clearance is denied.

History of Case

On September 3, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 17, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information*, effective September 2006.

Applicant answered the SOR on May 4, 2017. (Item 1.) He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 24, 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 July 24, 2017, and received by him on July 31, 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 within the 30 days allotted, which ended August 30, 2017. DOHA assigned the case to me on December 18, 2017. Items 1 through 4 are admitted into evidence.¹

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 security clearance 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 security clearance eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Procedural Rulings

I took administrative notice of facts concerning Pakistan. Those facts are set forth in the following: Government's Request for Administrative Notice for Pakistan, marked as Item 4. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted SOR allegations 1.a, 1.b, and 1.c. His admissions are incorporated into the following facts:

Applicant is 31 years old. He is a native-born U.S. citizen. He earned a bachelor's degree and a master's degree from U.S. universities. He has worked for his current employer, a government contractor, since August 2015. (Item 2.)

¹ Because Applicant did not respond to the FORM or affirmatively waive any objection to Item 3, I will consider only those facts in Item 3 that are not adverse to Applicant unless they are also contained in other evidence or included in the admissions in his answer to the SOR.

Applicant's mother, age 62, and father, age 74, are naturalized U.S. citizens. His mother was born in Pakistan and his father was born in India. His two brothers are also U.S. citizens. (Item 2.) Applicant's parents own property in Pakistan and reside there for several months each year. Applicant explained, "Both of my parents have immediate family members in Pakistan, so whenever they visit they usually stay for several months. Also, due to the old age of my parents and the old age of their family members, they're trying to spend as much time as possible with their loved ones." (Item 1.)

Applicant married his wife in November 2013 in Pakistan. She is a citizen of Pakistan, residing with him in the United States. She immigrated to the United States on March 27, 2015. She has permanent resident status. (Item 2.)

Applicant's parents-in-law are citizens of and residents in Pakistan. His father-in-law is 61 years old. His mother-in-law is 47 years old. Applicant speaks to his in-laws "at least once a month over the phone" and visits them when he is in Pakistan. (Item 2.)

Applicant noted:

[I]t is unlikely that I will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and any interests of the U.S. Both myself and my parents have deep longstanding relationships and loyalties in the U.S. that we can be expected to resolve any conflict of interest in favor of the U.S. interest. Also, the value or routine nature of my parent's property in Pakistan is such that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure myself. (Item 1.)

The U.S. Department of State has issued a travel warning with respect to Pakistan. It notes that travel to all areas of Pakistan is unsafe due to the ongoing risk of extrajudicial and targeted killings, corruption within the government, suicide bombings, and insurgent attacks. Attacks may target governmental officials, humanitarian aid, and non-governmental organizations. Extremists associated are active throughout Pakistan. Widespread human rights abuses are reported. (Item 4.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 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. Three 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;

(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; and

(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.

Applicant has close family connections to his wife, a citizen of Pakistan, and his parents-in-law, who are citizens and residents of Pakistan. His parents, who are U.S. citizens, frequently travel to Pakistan for extended visits and own property there. An articulated heightened risk is associated with having ties to family members and property in Pakistan, due to the activities of terrorist organizations and insurgents operating within its borders. 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(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; and

(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.

None of the above mitigating conditions were established in this instance. The potential for a conflict of interest is present due to Applicant's ongoing and significant ties to his family members and their property in Pakistan. He frequently communicates with his in-laws in Pakistan and his parents who travel to Pakistan for extended visits. While he claimed to have deep and longstanding relationships or loyalties in the United States, he failed to document evidence of those ties. The record contains little information on assets, or other deep and longstanding connections to the United States. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest, or would not be subject to heightened risk of foreign influence.

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 national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. The record lacks sufficient information to support a finding that he would resolve any conflicts of interest in favor of the United States. His contacts and connections with Pakistani family members create ongoing heightened potential for pressure, coercion, exploitation, or duress. 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 with doubts as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the Foreign Influence guideline.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against 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 national security eligibility and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge