



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



In the matter of:)
)
) ISCR Case No. 17-01562
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

12/08/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 24 May 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations and Guideline B, Foreign influence.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and

¹Consisting of the File of Relevant Material (FORM), Items 1-9 and Applicant's Response to the FORM (Response). I have also taken administrative notice of United States (U.S.) Government documents on U.S. relations with Pakistan, as requested by Department Counsel.

²DoD acted 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 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the new AG, but I have examined the old AG to ensure that I would not reach a different result if I issued this decision under the old AG. I would not rule differently under either set of AG.

Appeals (DOHA). The record in this case closed 11 August 2017, when Department Counsel stated no objection to Applicant's Response (Response) to FORM. DOHA assigned the case to me 20 October 2017.

Findings of Fact

Applicant admitted the SOR allegations. He is a 48-year-old employee for a U.S. defense contractor. He came to the United States in 2000, and became a naturalized U.S. citizen in 2006. He is married to a woman from Pakistan, who is a naturalized U.S. citizen. His wife lost three children to leukemia, who are buried in the United States. He obtained an undergraduate and graduate degree in the United States. He has been employed with his current employer since 2016. He appears to have been continuously employed full time or self-employed since 2005. He has not previously held a clearance. (Item 3)

The SOR alleges, Government exhibits (Items 1-9) substantiate, and Applicant admits, that he has a 2014 judgment in the amount of \$5,245 (SOR 2.a), and a 2012 judgment in the amount of \$81,388. (SOR 2.b) He also admits that his siblings are resident citizens of Pakistan. (Item 2)

Applicant disclosed his delinquent home owner association (HOA) judgment and his judgment on a rental property on his February 2016 clearance application (Item 3). He discussed these issues with a Government investigator in 2016 (Item 5), using his credit report (Items 6, 8, and 9). An earlier HOA judgment in the amount of \$1,433 has been satisfied. (Item 4)

Applicant attributed his financial problems to buying a second home in 2006 without first selling the first home. The first home was to be a rental property, but the tenants left the house in 2007, a shambles. He could not pay two mortgages at the same time. Also, his wife lost a child during pregnancy. He could not prioritize. He tried to work with the bank to refinance the loan, but the bank refused. The bank took the house and received a judgment against Applicant. He has not made any payments, but he is trying to negotiate a settlement. (Item 5) Earlier, his wages were garnished, but there are no specific details in the record. He is current with his mortgage on his second home. The other judgment is due to a lien placed on a town home by the HOA due to a violation of the HOA code. This lien was placed when Applicant was in Pakistan. Applicant fixed the violations, but the HOA would not drop the lien and penalties. He stated that he is working with both entities to reach an agreement so that he can pay his judgments. He has been on notice since early 2008. As far as the HOA judgment, Applicant stated that the board accepted his request to make a monthly payment, but he has not received a formal notice. (Response to FORM)

Foreign Influence

Applicant was about 30 years of age when he moved to the United States in 2000, and six years later he became a naturalized citizen. Applicant's wife is with him in

the United States. His father has a green card and lives in the United States with Applicant. Applicant has five siblings living in Pakistan. He has sponsored them to permanently live in the United States. He presented the documentation to prove his claim. The petitions were approved and his siblings are waiting for visas. (Answer)

Applicant speaks to his siblings a few times a year by phone. They speak about the health of the family. He has made many short trips to Pakistan from 2008 to 2015 for weddings or family events. After his children died in the United States, he traveled to Saudi Arabia for a religious and spiritual ritual to honor the memory of his children. (Item 3) In his response to the FORM, Applicant did not even know some of the addresses of his siblings. They do not know about his request for a security clearance. His four sisters are housewives and his brother owns a small shop in a city in Pakistan. They have no connections to the Pakistani government.

Applicant owns a home in the United States. He has three children buried in the United States and poignantly noted that siblings in Pakistan do not compare to his three children who died in the United States. He would never leave the United States or take his three children to Pakistan. (Response) His credit reports show that he has had some financial difficulty but otherwise the majority of accounts are paid as agreed. He has no financial interest in Pakistan.

Administrative Notice

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA).

Pakistani law does not permit dual citizenship or nationality except with the U.K. and Commonwealth nations. Under the Pakistani Citizenship Law of 1951, Applicant ceased to be a Pakistani citizen when he acquired U.S. citizenship.

Pakistan has a poor human rights record, including extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread government corruption, and the disappearance and imprisonment of political opponents. Nevertheless, Pakistan has had diplomatic relations with the United States since 1947 and has actively cooperated with the United States in the global world on terrorism. However, terrorist groups operate in Pakistan, making safety and security an issue. Extremist groups in Pakistan target American and other western interests, senior Pakistani officials, and members of minority indigenous and religious groups. Pakistan is not on the National Counterintelligence Center's list of most active nations engaging in foreign economic collection and industrial espionage. It is not known to be an active collector of U.S. intelligence information, nor is it known to target its expatriate former citizens to obtain U.S. information.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F⁴. Applicant has not sufficiently mitigated the security concerns. He acknowledges that he bought a second home without selling the first one. He had problems with the tenants and he could not afford two home mortgages. He tried to refinance the first home, but that was not successful.⁵ Applicant lost the home in 2008. He has made some efforts, but he has made no payments on the sizeable judgment.

Applicant meets some of the mitigating conditions for financial considerations. While his financial difficulties are both recent and multiple, the circumstances which led

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴AG ¶18

⁵¶19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

to his financial situation are unlikely to recur.⁶ They were arguably due to circumstances beyond his control, but he has not resolved the large judgment and is not making any payments. He is trying to resolve the HOA judgment, but so far it is not settled and there is no definite payment plan.⁷

Applicant submitted proof that he received a letter from the HOA, but nothing has been resolved.⁸ Applicant was in contact with his creditors well before the SOR was issued, but he was not proactive in his efforts to address these debts.⁹ Accordingly, I conclude the allegations under Guideline F against Applicant.

The Government also established a case for disqualification under Guideline B, but Applicant mitigated the security concerns. Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.¹⁰ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹¹ In addition, security concerns may be raised by connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.¹² Finally, security concerns may be raised by a substantial

⁶¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁸¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

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

¹⁰AG ¶ 6.

¹¹AG ¶ 7(a).

¹²AG ¶ 7(b).

business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign influence or exploitation.¹³

Considering first the country involved, Pakistan, there is nothing to suggest that Applicant's siblings would make Applicant or his siblings likely targets for coercion, duress, or influence. The Government's evidence explains the methods used by intelligence to pursue U.S. information, and those methods pursue information directly through infiltration of Government agencies or exile groups. There is no indication Pakistani agents seek to influence ex-patriate citizens by pressuring their relatives in Pakistan.

Considering Applicant's circumstances, the Government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's siblings in Pakistan. Applicant's siblings have no direct connection to the Pakistani government, and there is nothing in his connection to them to raise a concern over protecting classified information.

Similarly, Applicant's siblings raise no potential conflict of interest. He owes no duty to any Pakistani entity, and his family connection is minimal. Further, he has been a U.S. citizen since 2006, and his commitment to U.S. interests is manifest. His contacts with his siblings are less than typical, and there is nothing in the circumstances of them being in Pakistan, or in Applicant's contacts with them, to heighten the risk that he could be compelled to provide protected information to them. They do not know about his security clearance. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in Pakistan. Accordingly, I resolve Guideline B for Applicant.¹⁴

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-e:	For Applicant
Paragraph 2. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant

¹³AG ¶ 7(e).

¹⁴ I have considered the factors under the whole-person at AG ¶ 2(d), including his number of years living in the United States and that he is in the process of having his siblings come to the United States to live. Also, he has three children buried in the United States and will not leave them.

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch
Administrative Judge