



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-01895
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

02/22/2018

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 18, 2016. On August 4, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF acted 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 (AG) implemented by DOD on June 8, 2017.

Applicant answered the SOR on August 24, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 25, 2017. The case was assigned to me on October 27, 2017. On November 15, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 6, 2017. The hearing was convened as scheduled.

At the hearing, Government Exhibits (GE) 1 and 2 were admitted into evidence without objection. The Government's exhibit list was appended to the record as Hearing Exhibit (HE) I, and its request for administrative notice of relevant facts about Pakistan as HE II. Applicant testified and submitted Applicant Exhibits (AE) A through FF, which were admitted without objection. The Applicant's exhibit list was appended to the record as HE III. One witness testified on behalf of Applicant. DOHA received the transcript (Tr.) on December 21, 2017.

Findings of Fact¹

Applicant, age 30, has been married for six years and has an infant child. Applicant received his bachelor's degree in 2009 from a university in Pakistan, and his master's degree in 2014 from a U.S. university. He is an avionics systems engineer employed by two U.S. defense contractors, supporting the U.S. military, since January 2012. This is his first application for a security clearance.²

Applicant enrolled in the Pakistani university as an Air Force cadet in a program analogous to the U.S. R.O.T.C. program. In exchange for receiving a full scholarship, he was obligated to serve the Pakistani Air Force (PAF) at least during his time as a student. Applicant served in the avionics engineering branch of the PAF for five years as a student cadet (October 2004 through July 2009), and for two years following his graduation (July 2009 through August 2011). After three years as a student cadet, he attained the rank of pilot officer. He was later promoted to flying officer, and finally to flight lieutenant. He never held a PAF security clearance. Applicant resigned from the PAF in August 2011 without any intent to resume his service.³

At the hearing and during his security clearance interview, Applicant provided inconsistent statements with respect to the terms of any mandatory service obligation to the PAF after graduation, the procedures for resigning from the PAF, and his status with the PAF, including whether he was formally discharged.⁴

Following a month-long visit to the United States in 2010, Applicant fell in love with the country and decided that he would go back to Pakistan, marry his long-time girlfriend, and then return with her to make a life in the United States. Applicant immigrated to the United States the following year, as a citizen of Pakistan, with his then wife. In 2015, he became a naturalized U.S. citizen (as soon as he became eligible to apply). He renounced his Pakistani citizenship in 2016. His child is a U.S. citizen by birth. His wife is a citizen of Pakistan and a lawful U.S. permanent resident. She intends to apply for U.S. citizenship at her first opportunity in 2018. Prior to their immigration to

¹ I extracted these facts from Applicant's SOR answer, his SCA (GE 1), his biography (AE B), and to other parts of the record as indicated by citation.

² AE C, H and I; Tr. at 6, 17-18, 24, 35-36, 55.

³ GE 2; and N; Tr. at 20-21, 36, 42-53, 68-78.

⁴ GE 2; AE N; Tr. at 20-21, 36, 42-53, 68-78.

the United States, Applicant's wife had applied for and received a scholarship from a U.S. university for a Ph.D. program. She has been working as a licensed pharmacist since 2014.⁵

Applicant's parents immigrated to the United States in 2012. Since then, they have resided with Applicant in his home. His mother is a citizen of Pakistan and a lawful U.S. permanent resident. She intends to apply for U.S. citizenship at her first opportunity in 2018. Applicant's father became a naturalized U.S. citizen in 2016. He received a master's degree from a U.S. university in 2013, and has been employed by a U.S. company since 2014. Applicant's father is entitled to receive a pension from the Pakistani government of approximately \$450 per month from his prior position as deputy postmaster general. Since his father does not need that money, the pension is transferred directly to Applicant's brother, who uses it for his own expenses. Applicant's mother receives a non-governmental pension of approximately \$100 per month from her prior position as a teacher in a Pakistani private school. Between 2005 and 2012, Applicant's parents travelled to the United States approximately once or twice per year to visit Applicant's two paternal uncles, who are U.S. citizens. Applicant's parents have adopted the United States as their home and have no intent to return permanently to Pakistan.⁶

Applicant has two siblings: a sister who is a citizen and resident of Canada, and a brother who is a citizen and resident of Pakistan. His brother is married to a citizen and resident of Pakistan (Sister-in-law (SIL)), and has an infant daughter. His brother and SIL are both employed by the Pakistani government. His brother is an assistant auditor in the audit and accounts branch of the Auditor General's office. His SIL is a physician in the Pakistani Army. His brother has had plans to immigrate to the United States for years. Now that he is married, he intends to do so with his wife and child. To that end, Applicant's father filed petitions on Applicant's brother's behalf three times, most recently in March 2017. That petition is now pending approval by the U.S. Citizenship and Immigration Services.⁷

Applicant's wife's parents and two siblings are citizens of Pakistan. Her parents and one brother (Brother in Law (BIL) 1) reside in the United Arab Emirates (UAE), and her other brother (BIL 2) resides in Saudi Arabia. BIL 2 is married with two young children. None of his wife's family members are employed by a foreign government or military. Applicant's wife's parents and brothers plan to immigrate to the United States. To that end, Applicant's wife's maternal aunt, a U.S. citizen, filed a petition on behalf of

⁵ AE D, M, and O; Tr. at 21, 55-59, 67-68.

⁶ AE Q, AA, CC, DD, FF; GE 1 at 46-47; GE 2 at 4; Tr. at 22-23, 25-28, 41-42, 44-46, 57-58, 66-67.

⁷ AE R; GE 2 at p. 3; Tr. at 28-31, 59-62. The first petition filed on behalf of Applicant's brother and sister was pending for 12 years before they were no longer eligible due to having aged over 21 years. The second petition filed on behalf of his brother was pending from 2005 until 2013, when his brother's marriage disqualified him. The third petition is the most recent.

his wife's mother in 2006 that was approved by the U.S. Citizenship and Immigration Services in 2010, and is now pending the issuance of a visa anticipated in 2018.⁸

The Government did not submit an administrative notice request for either the UAE or Saudi Arabia, nor did it otherwise provide any facts about either country. In its closing statement, the Government did not state any concern with respect to Applicant's wife's family or the countries of UAE and Saudi Arabia.⁹

Besides contacts with his family, Applicant maintained contact with nine persons (Persons 1 through 9) "associated or formerly associated with" the PAF and the Pakistani university that Applicant attended. Persons 1 and 2 are friends with whom he attended university as cadets and served in the PAF. Persons 1 and 2 are now lawful U.S. permanent residents after having immigrated to the United States sometime after Applicant. They plan to apply for U.S. citizenship as soon as they become eligible. Applicant worked together with them for the same U.S. defense contractor.¹⁰

Of the seven other persons with whom Applicant attended university (Persons 3 through 9), two currently work for the PAF: Person 3 and 4, both former university roommates. Applicant described Person 4 as one of his closest friends at the time. Person 3 is a squadron leader working as an engineer for the PAF. Person 4's PAF occupation is not specified. He described Person 5 as a "friend." Applicant does not know Persons 6 through 9 well as he is linked only passively to each of them on a networking site because of common connections they share.¹¹ Applicant also maintained contact with three friends (Friends A through B) and one cousin not alleged in the SOR, none of whom are employed by a foreign government or military.¹²

After receiving the SOR, Applicant reduced the frequency of his contact with family and other persons residing in Pakistan, recognizing the impact it could have on his security clearance application. Applicant has not traveled to Pakistan since immigrating with his wife to the United States in 2011. His wife last visited Pakistan in 2014 and 2015, before her family moved to the UAE.¹³ As of the hearing, Applicant communicated (primarily via text messages or Internet calls on occasions like birthdays and other joyous moments) with his brother two times per year, and barely if at all with his SIL. He had no contact with Persons 3 through 5, Friends A through C, or his cousin in over a year.¹⁴

⁸ AE P; Tr. at 21-22, 31-34, 62-65.

⁹ Tr. at 79-81.

¹⁰ GE 1 at 25-26; Tr. at 34-36.

¹¹ GE 2 at 3-4; Tr. at 36, 39-41.

¹² GE 2 at 2 and 4; Tr. at 38-39.

¹³ SOR Answer; GE 1 at 34-42; GE 2 at 2-5; Tr. at 30-36, 38-41, 49-50, 66.

¹⁴ SOR Answer; GE 1 at 34-42; GE 2 at 2-5; Tr. at 30-36, 38-41, 49-50, 66.

Applicant and his wife have no intent to move back to Pakistan, and consider the United States their permanent home.¹⁵ Neither Applicant nor his wife own any assets in Pakistan. They co-own their home and maintain all their assets in the United States. Applicant earns an annual salary of approximately \$114,000. He is highly regarded by his supervisors, colleagues, and others for his character and work performance.¹⁶

Administrative Notice (Pakistan)

I have taken administrative notice of the U.S. Government's pronouncements concerning Pakistan, as outlined in HE II and the documents appended thereto, including the following:

- Pakistan is a federal republic.
- Pakistan continues to experience significant terrorist violence, including sectarian attacks. Throughout Pakistan, foreign and indigenous terrorist groups continue to pose a danger to U.S. citizens.
- South Asia, including Pakistan, remains a front-line region in the battle against terrorism. Although al-Qa'ida (AQ) in Afghanistan and Pakistan has been seriously degraded, AQ's global leadership continues to operate from remote locations in the region that the group has historically exploited for safe haven. Afghanistan, in particular, continues to experience aggressive and coordinated attacks by the Afghan Taliban, including the Haqqani Network (HQN), and other insurgent and terrorist groups. A number of these attacks were planned and launched from safe havens in Pakistan. Pakistan did not take substantial action against the Afghan Taliban or HQN, or substantially limit their ability to threaten U.S. interests in Afghanistan, although Pakistan supported efforts to bring both groups into an Afghan-led peace process. Pakistan has also not taken sufficient action against other externally-focused groups such as Lashkar-e-Tayyiba and Jaish-e-Mohammad, which continued to operate, train, organize, and fundraise in Pakistan.
- In January 2015, the Islamic State of Iraq and Levant (ISIL) announced the establishment of its formal branch in Afghanistan and Pakistan, ISIL-Khorasan (ISIL-K).
- While Pakistan remains a critical counterterrorism partner, numerous extremist groups, many of which target Pakistani civilians, officials, or members of other religious sects, operate in the country.

¹⁵ AE J – M; Tr. at 19-20, 37.

¹⁶ AE A, F, L, X, and Y; Tr. at 17, 24-25, 30, 50-55.

- The most serious human rights problems existent in Pakistan include extrajudicial and targeted killings, disappearances, torture, lack of rule of law (including lack of due process, poor implementation and enforcement of laws, and frequent mob violence and vigilante justice), gender inequality, violence against gender and sexual minorities, and sectarian violence. Other human rights problems include a weak criminal justice system, government infringement on citizens' privacy rights, government restrictions on freedom of assembly and freedom of movement, and corruption within the government and police. Lack of government accountability remains a problem, and abuses often went unpunished, fostering a culture of impunity among the perpetrators whether official or unofficial. Authorities seldom punished government officials for human rights violations. Continuing terrorist violence and human rights abuses by nonstate actors contributed significantly to human rights challenges in the country.

Policies

"[N]o one has a 'right' to a security clearance."¹⁷ As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information."¹⁸ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹⁹

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁸ *Egan* at 527.

¹⁹ EO 10865 § 2.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”²⁰ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.²¹ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²² The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²³ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁴ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²⁵

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁶ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁷

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

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

²⁰ EO 10865 § 7.

²¹ See *Egan*, 484 U.S. at 531.

²² See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²³ See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

²⁴ Directive ¶ E3.1.15.

²⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁶ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁷ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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 following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 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;

AG ¶ 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; and

AG ¶ 7 (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.

Applicant's ties to his brother and SIL establish AG ¶¶ 7(a) and 7(b) based on the heightened risk associated with Pakistan and their positions within the Pakistani government and military, and the potential conflict of interest that arise from his connection to them. Applicant's ties to Persons 1 through 9 establish AG ¶¶ 7(a) and 7(b) based on the heightened risk associated with Pakistan, and the related potential conflict of interest. A heightened risk is associated with Pakistan given the significant terrorism and human-rights problems existent there.

Because the record does not evince a heightened risk associated with UAE or Saudi Arabia or Applicant's in-laws who reside there, AG ¶ 7(a) and 7(b) are not established as to his in-laws. However, because they are foreign citizens residing in a foreign country, Applicant's connections to them establish the potential for a conflict of interest under AG ¶ 7(b).

Applicant's father is a resident and naturalized citizen of the United States. His brother, not his father, receives the financial benefit of his father's Pakistani government pension. Regardless of who receives it, the value of the pension is not significant to his father. Although they are citizens of Pakistan, Applicant's wife and mother are lawful U.S. residents, who have resided in the United States since 2011 and 2012, respectively. Applicant's mother does not receive a pension from the Pakistani government. The record did not otherwise establish AG ¶ 7(e) or any other Guideline B disqualifying conditions based on Applicant's ties to his wife, mother, or father.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 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; and

AG ¶ 8(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.

AG ¶ 8(a) is not fully established. Applicant's brother and SIL's respective employment positions are not security significant because they do not involve intelligence or handling sensitive military information. However, given the familial relationship and the heightened risk associated with Pakistan, AG ¶ 8(a) cannot be fully established as to Applicant's brother and SIL. It is, however, fully established as to Persons 1 and 2, because they reside in the United States, and to Applicant's in-laws, because neither the countries in which they reside nor the nature of their respective employment positions are security significant.

AG ¶ 8(b) is established. I conclude that Applicant would resolve any conflict of interest in favor of the U.S. interest. Applicant and his wife chose to make the United States their permanent home over six years ago. At his first opportunity, Applicant applied for U.S. citizenship, and his wife plans to follow suit in 2018. Their child is a U.S. citizen by birth. All of their assets are in the United States, including their home. Applicant and his wife pursued postgraduate degrees from U.S. universities, and have successful careers working for U.S. companies. Applicant's work in support of the U.S. military since 2012 has been lauded by his superiors and peers. Applicant's mother and father reside in the United States. His father is a naturalized U.S. citizen and his mother plans to apply for U.S. citizenship at her first opportunity in 2018. Applicant's brother, SIL, and wife's parents and siblings have petitions pending for their immigration to the United States. Applicant and his wife also have extended family who are citizens and residents of the United States. Despite his familial ties to his brother and SIL, who are still citizens and residents of Pakistan, his much deeper ties are in the United States. Regardless of any lingering obligation that the PAF may deem Applicant owes, Applicant resigned his position with the PAF in 2011 without any intent to resume his service.

AG ¶ 8(c) is established as to Persons 3 through 9, Friends A through C, and his cousin. His connections to Persons 6 through 9 are passive, as he has no direct contact with them. Applicant has not had contact with his cousin, Persons 3 through 5, or Friends A through C in over a year. There is little likelihood that his contact with them could create a risk for foreign influence or exploitation.

Guideline C (Foreign Preference)

The security concern under Guideline C (Foreign Preference) is set out in AG ¶ 9, as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

Applicant's service in the PAF establishes the following disqualifying condition under this guideline:

AG ¶ 10(d): participation in foreign activities, including but not limited to:

- (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
- (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

Applicant resigned from the PAF in August 2011, well before he became a naturalized citizen in 2015.²⁸ He has made his life here in the United States and has no intent to resume his PAF service. Whether or not the PAF accepted his resignation or deemed him discharged is not relevant to the analysis under this guideline. Accordingly, I conclude that the Guideline C concerns alleged in the SOR have been mitigated by the conditions set forth in AG ¶ 11(d) (the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen).

²⁸ Applicant was candid, sincere, and credible at the hearing. I did not find any intent to deceive with respect to the inconsistent statements he made about his PAF service and related matters.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines B and C in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I weighed the disqualifying and mitigating conditions under Guidelines B and C, and evaluated all the evidence in the context of the whole person and the heightened risk associated with Pakistan. I conclude that Applicant has mitigated security concerns raised by his prior service in a foreign military, and by his family and other ties to foreign citizens and residents. Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a – 1.k: For Applicant

Paragraph 2, Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge