



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-02060
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany Muetzel, Esquire, Department Counsel
For Applicant: *Pro Se*

09/21/2018

Decision

HOGAN, Erin C., Administrative Judge:

On September 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence, and Guideline E, Personal Conduct. The action was initially taken under Executive Order (EO) 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 adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On October 30, 2017, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 30, 2018. The case was assigned to me on May 16, 2018. On May 29, 2018, a Notice of Hearing was issued, scheduling the hearing for August 1, 2018. The hearing was held as scheduled. During the hearing, the Government offered six exhibits, which were admitted without objection as Government (Gov) Exhibits 1 - 6. Applicant offered 12 exhibits, which were admitted as Applicant Exhibits (AE) A - L, without objection. The Government withdrew the SOR allegations under Guideline E, Personal Conduct. The Government requested administrative notice be taken of certain facts regarding the country of Pakistan. The administrative notice document was marked as Administrative

Notice Document (Admin Not) I. Applicant did not object to the administrative notice documents. The transcript was received on August 9, 2018. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice – Pakistan

The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute.

Pakistan continues to have serious human rights problems including extrajudicial and targeted killings, disappearances, torture, lack of rule of law (including lack of due process, poor implementation and enforcement of laws, frequent mob violence and vigilante justice, and sectarian violence). Government and police corruption as well as rape, domestic violence, sexual harassment, honor crimes, and discrimination against women and girls remain serious problems. Lack of government accountability is a problem. Abuses often are unpunished fostering a culture of impunity. Authorities seldom punish government officials for human rights violations. (Admin Not 1)

In 2016, an assortment of terrorist groups continue to hide or attempt to hide or operate from portions of Pakistan's Federally Administered Tribal Areas, a mountainous region along Pakistan's northwest border with Afghanistan. Pakistan launched military operations to eradicate terrorist safe havens, although their impact was uneven. As of May 2017, the U.S. State Department warned U.S. citizens to defer all non-essential travel to Pakistan, because the presence of several foreign and indigenous terrorist groups poses a potential danger to U.S. citizens throughout Pakistan. Further concerns about Pakistan include the potential for weapons of mass destruction, trafficking, and proliferation. (Admin Not 1)

Findings of Fact

Applicant is a 37-year-old linguist employed with a defense contractor since April 2016 in an overseas location. He is married and has no children. (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

Foreign Influence

Applicant was born in Pakistan. He moved to the United States in May 2000, when he was 19. His father previously immigrated to the United States and became a U.S. citizen. He sponsored his children to immigrate to the United States. Applicant attended high school in the U.S. and graduated in June 2003. After high school, he took some college courses but did not graduate. He became a U.S. citizen in January 2007. In December 2013, he formally renounced his Pakistani citizenship. He has a U.S. passport, but no longer has a Pakistani passport. (AE K; Gov 1; Gov 6)

All of Applicant's paternal family members live in the United States. His parents, three brothers, three sisters, and three nephews are U.S. citizens. His niece resides in the U.S. and is a U.S. permanent resident. She is a minor and her mother is applying for U.S. citizenship on her behalf. Her citizenship application is pending. Applicant met his wife in Pakistan and married in 2007. His wife moved to the U.S. in 2009 and is now a U.S. citizen. They reside in the United States. His wife works for a U.S. government department as a cultural advisor and translator. Applicant's current job is located overseas. He works between six to seven months and then returns to the U.S. on leave for 21 days. (Tr. 23-28, 32-34, 40-44)

The SOR alleges several of Applicant's family members and in-laws being citizens of Pakistan. They will be addressed in the order listed on the SOR:

SOR ¶ 1.a: Applicant is alleged to have a sister who is a citizen of Pakistan: His sister became a U.S. citizen in approximately 2012. She has a U.S. passport that was issued in July 2016. His sister lives in the United States. She divorced her first husband and recently remarried. Her second husband is a citizen of and resides in Pakistan. He is a businessman. He intends to move to the United States. Applicant did not speak with his sister from 2011 to 2016. She has four children from her first marriage. All of her children are in the United States. (Tr. 32-34; AE A)

SOR ¶ 1.b: Applicant's father-in-law and mother-in-law are citizens of and reside in Pakistan: Applicant's father-in-law is now retired. He owned a movie theater in Pakistan. He suffers from health issues. His mother-in-law is a housewife. He and his wife have weekly telephone contact with his in-laws. His wife often sends money to her parents for them to purchase clothes for her. Her parents mail her the clothes they purchased with the money. Neither of his in-laws have ties to the Pakistani government or military. (Tr. 35-37, 39; AE B)

SOR ¶ 1.c: Applicant is alleged to have three nephews and one niece who are citizens of Pakistan. All four reside in the United States. Their mother is Applicant's sister who is the basis for the allegation in SOR ¶ 1.a. His nephews are U.S. citizens. His niece is a U.S. permanent resident. She is still a minor. She has been a permanent resident since 2008. Her mother has applied for U.S. citizenship on her behalf. His niece's U.S. citizenship application is pending. (Tr. 40-41; AE C)

SOR ¶ 1.d: Applicant's two brothers-in-law are citizens and residents of Pakistan: They operate a restaurant in Pakistan. They have no ties to the government or military. Both brothers-in-law are married. They reside with Applicant's father-in-law and mother-in-law. Applicant's wife has weekly telephonic contact with her brothers. Applicant has contact with them about once a year or when he travels to Afghanistan. (Tr. 41-44; AE D)

SOR ¶ 1.e: Applicant has a brother-in-law who is a citizen of Pakistan who resides in Spain: His wife's oldest brother resides in Spain. He is a citizen of Pakistan and a permanent resident of Spain. He owns a cell phone shop in Spain. In the past, Applicant's wife sent \$1,000 to him. She contacts her brother about twice a week by telephone. He is a widower. (Tr. 44; AE E)

SOR ¶ 1.f: Applicant has a brother-in-law and two sisters-in-law who are citizens of Pakistan: His older sister divorced his brother-in-law. Applicant has had no contact with his former brother-in-law since the divorce. As mentioned previously, Applicant's sister remarried a Pakistani businessman who intends to move to the United States. His two brothers, who are citizens of and reside in the U.S., married women who were Pakistani citizens. They both reside in the U.S. with their husbands. His older brother's wife is now a U.S. citizen. Applicant claims his other brother's wife is now a U.S. citizen, but no proof was provided. He has had no contact with them since 2011. (Tr. 46; AE F)

SOR ¶ 1.g: Applicant's wife had a sister-in-law who was a citizen and resident of Pakistan. She was a nurse in the Pakistani Army. Her rank was Major. She passed away on August 24, 2016. Applicant provided a copy of her death certificate. She had three children ages 18, 17 and 16. Applicant and his wife tried to adopt her children, but the request was denied by the Pakistani government. His sister-in-law's children are being raised by their grandparents. (Tr. 47, 49-50; AE G)

SOR ¶ 1.h: Applicant friended a person through Facebook who is a citizen and resident of Pakistan. It is also alleged the person was the Deputy Manager for Contracts for the Government of Pakistan. Applicant claims he is no longer in contact with this person. He blocked her Facebook account. (Tr. 47-48; AE H)

Applicant has several uncles in Afghanistan. He has not contacted them in over 25 years. His wife owns a piece of property in Afghanistan. She would like to build a house on the land and then treat it as a rental property. Applicant does not intend to move back to Pakistan. He prefers to live in the United States. Applicant's father owned several homes in Afghanistan. He sold all of the homes in July 2018. Applicant's parents traveled to Pakistan to sell the homes. Once they receive payments for the properties, they will return to the U.S. and will deposit the money received from the sale of the properties into U.S. accounts. (Tr. 48, 51-54, 61-62)

Applicant last trip to Pakistan was in January 2018. He and his wife visited his in-laws for about two weeks. He previously traveled to Pakistan in August 2013. Applicant has no overseas accounts. He and his wife rent a house in the U.S. and own two cars. They have approximately \$6,000 in U.S. bank accounts. All of Applicant's family members reside in the United States. Several of them have worked or currently work as linguists for the U.S. government. (Tr. 54-60; AE 5) In a previous job, Applicant received an Achievement Award for being a top performer in February 2015. (AE L)

Policies

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

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 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 access 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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 applicant 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 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 information.

Section 7 of EO 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

GUIDELINE B: Foreign Influence

AG ¶ 6 explains the Government's concern under 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 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant's 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; 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.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant's parents-in-law and two brother-in-law are citizens and residents of Pakistan. His relationship with his wife's family creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because Pakistan is a known haven for terrorist groups and has serious human rights problems. Applicant's contacts with his in-laws in Pakistan also create a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information.

I do not find a heightened risk with regard to Applicant's sister (SOR ¶ 1.a), his three nephews, and his niece (SOR ¶ 1.c) because Applicant's sister and her three sons (Applicant's nephews) are citizens of and reside in the United States. Applicant's niece is a permanent resident of the United States whose application for U.S. citizenship is currently pending. Applicant's brother-in-law who resides in Spain does not pose a significant security risk because of the nature of Spain's government. (SOR ¶ 1.e) The allegation in SOR ¶ 1.g no longer applies because Applicant's sister-in-law unfortunately passed away in 2016.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b) as a result of Applicant's admissions and evidence presented. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating conditions potentially apply:

(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; and

(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.

I find AG ¶ 8(a) and AG ¶ 8(b) apply to Applicant's case with regard to his in-laws and contacts in Pakistan. It is clear that Applicant's wife has ties of affection and obligation to her parents and siblings who reside in Pakistan. However, it is unlikely Applicant will have to choose between the interests of his in-laws and the interests of the United States. All of his immediate family members reside in the United States and are all U.S. citizens with exception of his niece who is a permanent U.S. resident and is in the process of applying for U.S. citizenship. Applicant's wife is a U.S. citizen who resides in the United States. All of their assets are in the United States.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant has lived in the United States since 2000 when he immigrated at the age of 19. He was sponsored by his father who previously immigrated to the United States. He attended and graduated from a U.S. high school. He has some college credits from a U.S. university. He became a U.S. citizen in 2007. He renounced his Pakistani citizenship in 2013. His professional life has been in the United States. Applicant currently works overseas for a U.S. contractor. His wife works as a contractor for the U.S. government. Applicant can be expected to resolve any conflict in favor of U.S. interests based on his longstanding ties in the United States. Security concerns under Foreign Influence are mitigated.

AG ¶ 8(c) applies with regard to his relationship with the acquaintance alleged in SOR ¶ 1.h. Applicant no longer has contact with this person who he communicated with over Facebook. His communications with this person were casual and infrequent and there is little likelihood of foreign influence or exploitation as a result of this contact.

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.

Under AG ¶ 2(c), 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 considered Applicant moved to the United States at the age of 19 in 2000. He became a U.S. citizen in 2007 and renounced his Pakistani citizenship in 2013. His immediate family members reside in the United States. His wife is a U.S. citizen and resides in the United States. His longstanding and strong U.S. ties outweigh the risks associated with his wife's in-laws who are citizens of and reside in Pakistan. Foreign Influence concerns are mitigated.

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
Subparagraphs 1.a -1.h:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a, 2.b:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge