



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



In the matter of:)
)
) ISCR Case No. 17-03799
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

10/12/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the security concerns arising from his continuing family connections in Pakistan. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

History of Case

Applicant submitted a security clearance application (SCA) on December 29, 2014. On December 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B. Applicant answered the SOR on February 13, 2018, and requested a hearing before an administrative judge.

I was assigned to the case on May 14, 2018. On May 15, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 13, 2018, and I issued an order to both parties to produce their documentary evidence by June 1, 2018. Department Counsel and Applicant’s Counsel submitted their documentation as requested. I convened the hearing as scheduled. Government’s Exhibits (GE) 1 through 3 and Applicant’s Exhibits (AE) A and L, were admitted without objection. Applicant also testified. The record was held open until June 18, 2018, and Applicant’s Counsel timely submitted AE M, which was admitted without objection. I received the completed transcript (Tr.) on June 21, 2018, and the record closed.

Administrative Notice

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 GE 3 and Applicant's Request for Administrative Notice for Pakistan, marked as AE L. These documents are included in the record. 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 is 49 years old, and he was born in Pakistan. He graduated from a Pakistani college in 1995. (AE E; AE F) He entered the United States in 1999, and was naturalized in 2005. Applicant and his wife have been married since 1999, and she was also naturalized in 2005. As a U.S. citizen, his father-in-law sponsored them to come to the United States. (Tr. 17) Their two sons, who are 17 and 18, were born in the United States. (GE 1 at 32-33; AE A)

In 2008, Applicant became a linguist and translator for a U.S. defense contractor. He deployed to Bagram, Afghanistan from 2008 until 2013. While he was deployed, he interviewed Afghan citizens and others to prevent the hiring of "terrorist-related people" by U.S. and Coalition forces. He uncovered an Indian terrorist and at least one individual who was committing financial fraud. Applicant deployed to Kuwait in 2013 and returned to the United States in February 2017. He has held a clearance since approximately 2010, and he requires a clearance for continued employment as a linguist. (Tr. 9, 18-19, 50-53; GE 2 at 1-2; AE C)

Applicant's mother and father are citizens and residents of Pakistan. They communicate four to six times a year. The last time he saw them was in Pakistan in 2016. His father served as mechanical engineer in the Pakistan Navy, retired in approximately 1984, and receives a monthly pension of \$50 to \$80. His mother is a housewife. Every month, Applicant sends his parents between \$200 and \$250 to support and supplement their living expenses. (Tr. 19-27; GE 2) Applicant's father visited the United States in 2013 for eight months, and lived for a short time with Applicant's family. He also visited the U.S. November 2012. Applicant's father is a U.S. green card holder. (Tr. 27-29, 56; GE 2 at 2-3)

Applicant has three younger brothers. One of his brothers is a citizen and resident of Pakistan, and he helps take care of their parents. They communicate monthly via text messages and approximately four times a year telephonically. He works as a private tutor. (Tr. 30-32) His second brother is a citizen and resident of the United Kingdom. His third brother is a citizen and resident of the United States. He is married to Applicant's wife's sister, and she is a permanent resident of the United States. (Tr. 29-36) Applicant's sister is a citizen and resident of Pakistan. She is a divorced housewife and lives with their parents. He communicates with her when he speaks to their parents. (Tr. 36-37)

Applicant's mother-in-law is a housewife and a citizen and resident of Pakistan. However, she is also a permanent resident of the United States. She visits every two years for two to four months to see her husband and children, who are citizens and residents of the United States. She typically stays with Applicant's family for two to three days. Her last visit was in 2017. His wife communicates with her mother telephonically three to four times a year. (Tr. 40-42)

Applicant's father-in-law is a citizen and resident of the United States. His wife's two brothers are citizens and residents of the United States. Two of her three sisters are citizens and residents of the United States. Her third sister, as mentioned above, is a permanent resident of the United States and is married to Applicant's brother, who is a citizen and resident of the United States. (Tr. 43-44)

Applicant and his family visited Pakistan in 2016 for two weeks to visit his parents and siblings. His sister was having marital problems, and he tried to mediate. He visited Pakistan in 2008 for three to four days, and he visited Pakistan in 2002. (Tr. 46-48, 55)

Applicant has put his life at risk for the United States, and he loves being a U.S. citizen. For almost ten years, he supported U.S. troops and held a security clearance. He has not had any security problems or issues. He affirms he would resolve any conflict of interest in favor of the U.S. government. He has not been subjected to coercion or pressure by his foreign relatives or anyone else. Applicant wants to continue to use his linguist skills to protect the United States. (Tr. 18, 44-46)

All of Applicant's financial assets are located in the United States. (Tr. 45, 58-59) Applicant and his wife are involved in a local mosque and at their children's school. (Tr. 59) His family has no affiliation with the Pakistan government, other than his father's pension. (Tr. 49)

Applicant provided work-related letters of recommendation. He is described as an accurate, impressive, honest, hard-working, dedicated, and knowledgeable translator. His efforts kept U.S. military bases safe. He also provided a letter from an individual who knows him in the United States and considers him to be financially responsible, kind, polite, social, and respectful. (AE C) He submitted three certificates of appreciation related to his overseas service. (AE M)

Pakistan

Pakistan is a parliamentary federal republic and a member of the United Nations. The United States and Pakistan are allies and partners in addressing terrorism in South Asia.

Al-Qa'ida's presence in Pakistan has been seriously degraded, and terrorist-related violence in Pakistan declined for a second straight year in 2016. However, the U.S. State Department continues to advise U.S. citizens to defer all non-essential travel to Pakistan because of the danger posed by the presence of terrorist groups and other

armed extremist elements. Additionally, the U.S. State Department affirms that the Pakistan government has not taken sufficient action against various terrorist groups that continue to operate, train, organize, and fundraise in Pakistan.

The most U.S. State Department human rights report reflects that serious human rights violations have occurred in Pakistan. This report also indicates that corruption within Pakistani society remains a significant problem.

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be used 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, administrative judges apply the guidelines 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(c), 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 national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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

the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

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 includes several conditions that could raise security concerns under AG ¶ 7. The following 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
- (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.

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, that 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 has ongoing and commendable familial connections with his parents, siblings, and mother-in-law, who are residents and citizens of Pakistan. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Pakistan may threaten Applicant and his family, as they may seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationships with his relatives also create a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members living in Pakistan. The evidence and Applicant's admissions are sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable in this case:

- (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.

Applicant has lived in the United States for almost twenty years and has worked supporting the U.S. government for almost ten years. He stated he would resolve any conflict of interest in favor of the United States. AG ¶ 8(a) and (b) are established based on his past performances, his U.S. citizenship, and the fact that his children, brother, wife, and his wife's family reside in the United States. There is no evidence his family members in Pakistan have ever been contacted or pressured by any terrorist group or the Pakistan government, and there is no evidence he has been a security threat.

Generally, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying circumstances. However, where an applicant has established by credible, independent evidence that his or her compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the national security, such circumstances give credibility to an applicant's assertion that he or she will recognize, resist, and report a foreign power or terrorist's attempts at coercion or exploitation. In this case, Applicant has a track record of complying with security regulations and procedures in high-risk circumstances in which he made contributions to national security. See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008).

Applicant's relationships with his parents, siblings, and mother-in-law are not casual, nor is their contact infrequent. AG ¶ 8(c) does not apply.

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 commonsense 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 Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal and commendable results of his family situation. There is mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature and intelligent person, who has lived in the United States during the past almost twenty years, and has been a naturalized citizen since 2005. His spouse and children are U.S. citizens. His brother and his wife's family also emigrated from Pakistan to the United States. In his employment, from 2008 to 2017, he has provided direct

support to the U.S. armed forces as a linguist and translator. There is no evidence that he has ever taken any action that could cause potential harm to the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his foreign family members. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge