



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



In the matter of:)
)
) ISCR Case No. 14-05694
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the foreign preference and personal conduct security concerns. He failed to present sufficient evidence to mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 4, 2014. After reviewing it and the information gathered during a background investigation the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a clearance. On June 6, 2015, DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence), Guideline C (foreign preference), and Guideline E (personal conduct).¹ Applicant answered the SOR on July 29, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

¹ The action was taken 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

The case was assigned to me on September 17, 2015. The DOHA issued a notice of hearing on October 2, 2015, scheduling the hearing for October 21, 2015. Applicant's hearing was held as scheduled. During the hearing, Department Counsel offered four exhibits (Government Exhibit (GE) 1-4) and Applicant offered seven exhibits (Applicant Exhibit (AE) 1-7). GE 2 is a summary of Applicant's April 23, 2014 interview with a government investigator. Applicant provided some corrections to the summary of his interview, and with those corrections it was adopted and admitted into evidence. AE 1 through 6 were admitted into evidence without objection.

Applicant offered five decisions issued by DOHA administrative judges concerning Applicants whose security clearance or access to sensitive information was granted: Iraq—ISCR Case No. 14-01090 (A.J. Sept 22, 2014); India—ADP Case No. 14-01816 (A.J. Sept. 26, 2014); Israel—ISCR Case No. 14-00295 (A.J. Oct. 15, 2014); Morocco—ISCR Case No. 13-00642 (A.J. Oct. 10, 2014); and United Kingdom—ISCR Case No. 14-00900 (A.J. Oct. 22, 2014). (AE 7) The five decisions were attached to the record and considered as persuasive, but not binding precedent. DOHA received the transcript of the hearing on November 4, 2015.

Procedural Ruling

Department Counsel requested I take administrative notice of facts concerning the government of Pakistan. She provided supporting documents to show detail and context for those facts. Applicant did not object, and I took administrative notice as requested.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.e. He partially admitted the allegations in SOR ¶¶ 2.b, 3.a, and 3.b, and provided mitigating information. His SOR and hearing's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 26 years old, and he seeks employment with a government contractor. He was born in Pakistan. At age 16, he was sponsored by an uncle to emigrate to the United States in December 2005. He attended high school in the United States from January to August 2006. Applicant then returned to Pakistan where he attended school from August 2006 to May 2010. (Tr. 34; SOR ¶ 2.b)² In May 2010, Applicant returned to the United States and attended a U.S. university. From February to May 2012, Applicant returned to Pakistan. From June 2012 to June 2013, Applicant attended a U.S. university. From July 2013 to October 2013, he returned to Pakistan.

²In Applicant's SCA, he said he lived in the United States with his uncle from December 2005 to June 2012, which he acknowledged was not accurate. (Tr. 34)

Applicant became a naturalized U.S. citizen in December 2013.³ In December 2014, he visited Pakistan to attend his brother's wedding. He was awarded a bachelor's degree from a U.S. university in September 2015.

Applicant has three uncles, who live in the United States. One uncle has lived in the United States for 25 years, and another uncle has lived in the United States for 35 years. Applicant's father has been a business owner in Pakistan for more than 35 years. Applicant's brother works for Applicant's father. Applicant has weekly contact with his parents, and he communicates on a monthly basis with his siblings living in Pakistan.

Applicant operated an export business in the United States with connections in Pakistan from May 2011 to December 2013. His father was his main client, and his first shipment from the United States to Pakistan was in 2012. His business had about six transactions a year. He received thousands of dollars from his father to purchase items in the United States for export to Pakistan to be used in his father's business. He stated that he does not have any bank accounts in Pakistan.

Applicant averred that none of his family or extended family members have any affiliations, contacts, or relationships with the Pakistan military or political entities. However, this statement of lack of contacts is unreliable. He does not discuss with his father whether his father sells items to the Pakistan military or government. Applicant claimed he does not know anything about his father's finances or the value of his father's business. Applicant did not expect to inherit from his father; however, it is possible that he might inherit something.

Applicant has a friend with a business in Pakistan. Applicant and his friend rarely discuss his friend's business. Applicant has no knowledge about whether his friend has connections with the Pakistan military or government. Applicant's friend and Applicant communicate about once a year.

Applicant has two sisters who are residents and citizens of Pakistan. One is married to a businessman, and the other sister is married to a man involved in construction. Applicant has limited knowledge of whether or not his brothers-in-law are involved with the Pakistan government. Applicant's family, who are citizens and residents of Pakistan, have visited Applicant in the United States about once every two years. Applicant's third sister is married to a Pakistan citizen, and she and her husband have been residents of the United Arab Emirates since 2012.

One of Applicant's brothers, who is 22 years old, has been living with Applicant since May 2014.⁴ His brother is a student at a community college in the United States.

³Assuming Applicant completed the proper documentation for exit and reentry into the United States, he met the residence and physical presence requirements to qualify for U.S. citizenship because he was a U.S. resident for at least five years, and he was physically present in the United States at least 30 months out of the previous five years. See U.S. Citizenship and Immigration Services website, *Continuous Residence and Physical Presence Requirements for Naturalization*, <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/continuous-residence-and-physical-presence-requirements-naturalization>. (HE 1) See also 8 CFR Part 316(a) and 319(a). (HE 2)

His brother is a permanent resident of the United States. Applicant's brother maintains frequent contacts with his family living in Pakistan. Applicant does not provide any financial support to anyone living in Pakistan. He does not have any financial assets in Pakistan.

Applicant held a Pakistan passport from October 2005 until he surrendered it to his facility security officer in May 2014. He has a U.S. passport, which he used to travel to Pakistan in December 2014. Applicant claimed that he was willing to renounce his Pakistan citizenship; however, he did not receive information on how to do so.⁵ He said his family in Pakistan was unaware that he was working for a DOD contractor, and they are unaware that he is seeking a national security position. However, Applicant's family in the United States is aware that he is seeking a national security position.

Applicant's 2014 SCA requested that he disclose the names and addresses of his parents and siblings. He listed his father and mother living in Pakistan and one brother and one sister who were visiting in the United States. He did not disclose his other brothers and sisters living in Pakistan. Applicant claimed that he did not understand what the question was seeking. During his April 23, 2014 interview with a government investigator, Applicant disclosed the information about his siblings living in Pakistan. The summary of the interview does not indicate whether his disclosures about his siblings living in Pakistan were after being confronted with the facts.

Applicant disclosed in his 2014 SCA that he was charged with acting as a translator and unlawfully assisting a foreign person, who was attempting to obtain a driver's license. Applicant was lawfully helping someone take a computerized test as a translator, and the person being tested improperly communicated with Applicant in a language other than English. Applicant explained his actions to the judge, and the charge was dismissed.

Applicant's banker wrote that Applicant is motivated, responsible, dedicated, and has high integrity. He is considered to be a problem solver, who complies with rules. A colleague at a U.S. university Applicant attended and currently a coworker, described Applicant as a good student, team player, trustworthy, and responsible. Two current coworkers described him as reliable, responsible, intelligent, organized, honest, and trustworthy. A friend who attended a U.S. university with Applicant described him as trustworthy, dependable, and responsible. All of his character statements support approval of his access to classified information.

I take administrative notice of the following facts concerning the government of Pakistan. Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States

⁴The SOR does not allege any security concerns relating to Applicant's brother, who is living with Applicant. Applicant's relationship with this brother will not be considered for disqualifications purposes.

⁵If Applicant wishes to renounce his Pakistan citizenship, he can follow the instructions on Embassy of Pakistan in Washington D.C. website. See Embassy of Pakistan website, *Renunciation of Passport [and Nationality]*, http://www.embassyofpakistanusa.org/nicopmain_nicop_renunciation.php. (HE 2)

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) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Pakistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al Qaida operate in Pakistan, and in some instances elements of the Pakistan Government may be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 LT was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Pakistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghanistan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al Qaida exploits the permissive operating environment to support the Afghanistan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Pakistan Taliban and other extremists groups, Al Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistan civilians and security force personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other personal reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistan Government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail, phones, and electronic messages without the requisite court approval. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut-off military aid to Pakistan for several years.

After September 11, 2001, Pakistan became allied with the United States in counterterrorism. Pakistan committed to elimination of terrorist camps on the

Afghanistan-Pakistan border and sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

On May 1, 2011, U.S. special operations personnel raided a large compound in Pakistan and killed Osama bin Laden, the leader of al Qaida. The raid raised concerns that the Pakistan Government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

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 the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has

or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant was born, raised, and educated in Pakistan through high school level. He attended one semester of high school and college in the United States. His parents, two brothers, and three sisters are citizens and residents of Pakistan. Additionally, Applicant has friends who are citizens and residents of Pakistan. He operated an export business with connections in Pakistan from the United States or Pakistan.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

(a) contact 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant has ties of affection and obligation to his family living in Pakistan. Influence, pressure, or coercion applied to Applicant’s family living in Pakistan to obtain classified information from Applicant could result in a security concern. Applicant frequently communicates with his parents and siblings living in Pakistan. His ongoing communications over the years with family in Pakistan are sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” His relationships with his family living in Pakistan

create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his family living in Pakistan. For example, if terrorists in Pakistan wanted to expose Applicant to coercion, they could exert pressure on his family living in Pakistan. Applicant would then be subject to coercion and classified information could potentially be compromised.

Applicant's possession of close family ties with his family living in a dangerous country, such as Pakistan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States.

The relationship of Pakistan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family living in Pakistan does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his family living in Pakistan, which is a dangerous country for anyone with a close link to the U.S. Government and access to classified material.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified or economic information from or through Applicant or his family living in Pakistan, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Pakistan has a significant problem with terrorism. Applicant's relationships with family members living in Pakistan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist family members in Pakistan by providing sensitive or classified information. Department Counsel's evidence has established AG ¶¶ 7(a) and 7(b) and raised the issue of potential foreign pressure or attempted

exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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 cognizant security authority; and

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with his family living in Pakistan. His loyalty and connections to his family living in Pakistan are positive character traits. However, for security clearance purposes, those same connections and contacts negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is “little likelihood that [his relationships with relatives living in Pakistan] could create a risk for foreign influence or exploitation.” Applicant is credited with mitigating SOR ¶ 1.e because he does not have frequent communications with his friend who is a citizen and resident of Pakistan.

AG ¶ 8(b) partially applies. A key factor is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has some connections to the United States. In 2005, at age 16, Applicant came to the United States and lived here for about six months. He then returned to Pakistan where he lived until May 2010. He returned to Pakistan from February to May 2012; and from July to October 2013. He also visited Pakistan in December 2014.

When Applicant took his naturalization oath and swore allegiance to the United States as a U.S. citizen, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. He earned his bachelor’s degree in the United States, and his employment is with a DOD contractor. He has three uncles who have lived many years in the United States, and he has one brother who lives with Applicant in the United States.

Applicant has strong and continuing connections to Pakistan. He is 26 years old, and he has lived between five and six years (about 65 months) in the United States as of the date of his hearing and he has lived the remainder of his life in Pakistan. He maintains close relationships with his parents and siblings in Pakistan, and he frequently communicates with them. His family living in Pakistan has visited Applicant in the United States. Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in Pakistan.

There is no evidence, however, that terrorists, criminals, the Pakistan Government, or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information. Of course, the primary risk to his family living in Pakistan is from terrorists and other lawless elements and not the Pakistan Government. Applicant’s family in Pakistan will become potential targets of terrorists because of Applicant’s support for the United States, and Applicant’s potential access to classified information could theoretically add some risk to Applicant’s family from lawless elements in Pakistan.

AG ¶¶ 8(d) and 8(e) are not raised by the facts in this case and do not apply. AG ¶ 8(f) has limited application because it is only available to mitigate security concerns arising under AG ¶ 7(e). Applicant did not disclose investments in Pakistan.

In sum, Applicant’s connections to his family living in Pakistan are significant. He is close to his family in Pakistan and continues to frequently communicate with them. He

has lived about 20 years in Pakistan and about 6 years in the United States. For about two years he exported materials from the United States to his father's business in Pakistan. He is not knowledgeable about whether or not his father's business is connected with the Pakistan Government or military. He does not really know whether or not his father has connections to the Pakistan Government or military. He only has one sibling that lives in the United States, and no other immediate family members live in the United States. He did not describe any significant property in the United States. Foreign influence security concerns are not mitigated.

Guideline C, Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, "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 be prone to provide information or make decisions that are harmful to the interests of the United States."

In 2005, at age 16, Applicant came to the United States and lived here for about six months. He then returned to Pakistan where he lived until May 2010. He returned to Pakistan from February to May 2012; and from July to October 2013. He also visited Pakistan in December 2014. In December 2013, Applicant became a naturalized U.S. citizen. He held a Pakistan passport from October 2005 until he surrendered it to his facility security officer in May 2014.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant's case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶ 10(a)(1) applies to his possession of a Pakistan passport after becoming a U.S. citizen. SOR ¶ 2.b alleges a foreign preference security concern because Applicant returned to Pakistan several times from August 2006 to October 2013. Disqualifying conditions under Guideline C are not limited to those specifically enumerated under AG ¶ 10, and Applicant's frequent, lengthy visits to Pakistan show some indicia for a foreign preference for Pakistan.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant's primary connections to Pakistan are based on his birth and parentage, and AG ¶ 11(a) has some application. In December 2013, Applicant became a naturalized U.S. citizen. He surrendered his Pakistan passport to his facility security officer in May 2014. AG ¶ 11(e) applies to his possession of a Pakistan passport. His lengthy trips to Pakistan occurred before he became a U.S. citizen. He also expressed a willingness to renounce his Pakistan citizenship, and AG ¶ 11(b) applies. Foreign preference security concerns are mitigated.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's 2014 SCA asked him to list his relatives living in Pakistan. He listed his father and mother and one brother and one sister who were visiting in the United States. The SOR alleged that Applicant falsified his 2014 SCA because he failed to disclose other siblings living in Pakistan. It also alleged that Applicant was charged with a misdemeanor for unlawfully helping a foreign person obtain a driver's license. AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.⁶

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such

⁶The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

AG ¶ 17 provides two mitigating conditions that are applicable in this case: "(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;" and "(f) the information was unsubstantiated or from a source of questionable reliability."

In Applicant's 2014 SCA, he was asked to list all of relatives. He listed his father and mother living in Pakistan and one brother and one sister who were visiting in the United States. His failure to disclose his brothers and sisters living in Pakistan was not designed to deceive security officials. This failure occurred because he did not understand what the question was seeking. His disclosure of his parents, who are citizens and residents of Pakistan, and his trips to Pakistan on his SCA, shows his intention was not to conceal his connections to Pakistan.

During his 2014 interview with a government investigator, Applicant disclosed the information about his siblings living in Pakistan. The summary of the interview does not indicate his disclosures were after being confronted with the facts. Considering the evidence as a whole, I conclude that Applicant did not intend to falsify his SCA. AG ¶¶ 17(a) and 17(f) apply to the allegation in SOR ¶ 3.a.

Applicant disclosed in his 2014 SCA that he was charged with unlawfully assisting a foreign person, who was attempting to obtain a driver's license. Applicant was lawfully helping someone take a computerized test, and the person being tested improperly communicated with Applicant in a language other than English. Applicant explained his actions to the judge and the charge was dismissed. Mitigating condition AG ¶ 17(f) applies to SOR ¶ 3.b. Personal conduct security concerns are mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines B, C, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant first came to the United States in December 2005. He subsequently was physically present (albeit intermittently) in the United States for almost six years. He has three uncles who have lived in the United States for many years. Applicant's brother has a green card, and he lives with Applicant. Applicant earned a bachelor's degree from a U.S. university. He turned in his Pakistan passport to his facility security officer, and offered to renounce his Pakistan citizenship. When he was naturalized as a U.S. citizen, he swore allegiance to the United States. He has employment in the United States with a DOD contractor. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant or his family living in Pakistan. Applicant's banker and several colleagues from college and work lauded Applicant for being

responsible, dedicated, compliant with rules, intelligent, trustworthy, well organized, and honest. All of his character statements support approval of his access to classified information.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation and dangers there. Pakistan is a dangerous place because of violence from terrorists and other lawless elements. Terrorists continue to threaten the Pakistan Government, the interests of the United States, and those who cooperate and assist the United States. The Pakistan Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Pakistan Governments are allies in the war on terrorism. The danger of coercion from the Pakistan Government or terrorists in Pakistan is more likely than in many other countries. Pakistan and the United States have close relationships in diplomacy and trade. Pakistan and the United States occasionally have profound policy disputes.

The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of her clearance at this time. Applicant is close to his parents and siblings who are residents and citizens of Pakistan. He frequently communicates with his parents and siblings. For about two years, he was in a business relationship with his father where he exported U.S. materials to Pakistan, and then his father utilized a manufacturing process and transferred the products to unspecified entities in Pakistan. Applicant said he was unaware of whether his father had connections with the Pakistan government or military from his business or otherwise. Applicant's connections to his family in Pakistan make Applicant more vulnerable as a target of coercion by lawless elements in those countries. His family in Pakistan will be at a greater risk if his clearance is granted.

Foreign preference and personal conduct security concerns are mitigated. I conclude Applicant has failed to carry his burden and foreign influence concerns are not mitigated. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraphs 3.a and 3.b:

For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Juan J. Rivera
Administrative Judge