



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



In the matter of:)	
)	
)	ISCR Case No. 14-06547
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Lance R. Gallardo, Esquire

May 24, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 15, 2014. On November 7, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 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), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 30, 2015. He answered the SOR in writing through counsel (Answer) on December 9, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 15, 2016. DOHA issued a notice of hearing on March 16, 2016, and I convened the hearing as scheduled on April 6, 2016. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified

on his own behalf, as did a former supervisor, and submitted Exhibits (AppXs) A through H, which were received without objection. DOHA received the transcript of the hearing (TR) on April 14, 2016. The record closed on April 14, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a., 1.b., and 1.c. of the SOR, with explanations. He denied the factual allegations in Subparagraph 1.d. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline B - Foreign Influence

Applicant left Pakistan in 1987 “to start . . . [his] doctoral education in . . . England.” (TR at page 29 line 1 to page 31 line 17.) He “first entered [the] U.S. in 1991 on an Immigrant’s Visa,” and was “naturalized in 1999.” (*Id.* and Encl 4 to Answer.) His net worth in the United States is about “\$1.32 million,” with “no money, no value whatsoever in Pakistan.” (TR at page 40 line 17 to page 41 line 22, and AppX G.)

As to his close relatives, Applicant’s father is deceased but his mother is a citizen and resident of the United States. (TR at page 31 line 18 to page 33 line 14, and at page 35 line 6 to page 37 line 3.) His four brothers are also U.S. citizens and reside in the United States. (*Id.*) As to his in-laws, his mother-in-law, a brother-in-law and a sister-in-law are also citizens and residents of the United States. (TR at page 31 line 18 to page 33 line 14, and at page 35 line 6 to page 37 line 3.) The status of his remaining sister, a brother-in-law, two sisters-in-law, and “host of relatives,” as alleged in the SOR, is as follows:

1.a. Applicant’s sister is a dual national with Canada, resides in Pakistan, and is a retired housewife. (TR at page 49 lines 7~18.)

1.b. Applicant’s other brother-in-law is a citizen of and resides in Pakistan. (TR at page 49 line 19 to page 50 line 7.) He is a retired engineer, who worked for “a semi-private [gas] company.” (*Id.*)

1.c. Applicant’s other two sisters-in-law are citizens and residents of Pakistan. (TR at page 50 line 8 to page 51 line 8.) Both are teachers with no connection to the Pakistani Government. (*Id.*)

1.d. Applicant denies that he maintains “contact with a host of relatives who are citizens and residents of Pakistan.” (TR at page 51 line 9 to page 53 line 10.) The relatives consist of an Aunt, an “eighty-some years old . . . retired school principal,” with no connection with the Pakistani Government; her self-employed son, who is a “dermatologist”; and two nephews, one of whom works “in a private textile firm, and the

other one is a physician.” (TR at page 51 line 9 to page 53 line 10.) “None of his relatives work for the government.” (*Id.*)

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 over-arching 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 Executive Order 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

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign interests, 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 a foreign interest.

Here, Paragraph 7(a) is arguably applicable: 7(a) “*contacts with a foreign family member . . . 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*”, The Applicant’s sister and four of his in-laws are citizens and residents of Pakistan. This are clearly countered, however, by the first mitigating condition, as under 8(a) “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*” The Applicant has lived in the United States since 1991, is a U.S. citizen, has only U.S. financial interests, and the majority of his close relatives are citizens and residents of the United States.

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 the circumstances. 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Those who know Applicant in the work place speak most highly of him. (TR at page 18 line 24 to page 27 line 11, and AppXs A~F.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Influence.

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.d. For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge