



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



In the matter of:)	
)	
)	ISCR Case No. 15-06359
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: Mark Zaid, Esq.

01/05/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for a security clearance is granted.

Statement of the Case

On April 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 6, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 17, 2016. I convened the hearing as scheduled on December 8, 2016. The Government

offered exhibits (GE) 1 and 2. Applicant's counsel objected to GE 2, and it was not admitted. GE 1 was admitted into evidence without objection. Applicant and three witnesses testified. He offered Applicant's Exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 16, 2016.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about India. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 46 years old. He was born in India. He completed college in India and immigrated to the United States in 1997. He married his wife in India in 2000 and she immigrated to the United States the same year. They have two children; ages eleven and three, both born in the U.S. Applicant and his wife became U.S. citizens in 2009. His wife is college educated and has a career. Applicant works as a contractor for the U.S. military. He holds a public trust clearance.¹

Applicant and his wife hold "person of Indian origin" (PIO) cards. This card is issued to people of Indian origin who are no longer citizens of India. It is used in lieu of a tourist visa that is required to enter India. It does not provide the holder with any special privileges other than noted.²

Applicant's father, mother, and brother are citizens and residents of India. His father retired from the Indian railway in 2002. He receives a modest government pension. His contact with the Indian government is the same as an ordinary citizen. His mother is a housewife and has never worked outside of the home. Applicant's brother is college educated and works as an organic farmer. They all live in a small remote town in the southern region of India. Applicant and his family travel to India to visit their family about every two years. Their last visit was in 2016. Applicant speaks to his parents on the phone about once a week, so that his children can have contact with their grandparents. His parents have visited Applicant and his family in the United States about three to four times, but it is unlikely they will visit in the future due to their age.

¹ Tr. 9, 40-41, 65, 68, 82-87; GE 1.

² Tr. 54-56, 64, 75.

Applicant speaks to his brother about once a month. His conversations with his family relate to general health and well-being topics.³

Applicant's wife's father is a citizen and resident of India. Her mother is deceased and her father remarried. Applicant's wife visits her father when they travel to India. She has no relationship with her stepmother. Her father visited Applicant and his wife in the United States in 2005 for about a month and has not visited again. They do not anticipate he will visit them again. Her father lives in close proximity to Applicant's parents. Applicant's wife speaks to her father by phone about once a month. Applicant's phone conversations with his father-in-law occur about once every four months. He may speak to his wife's stepmother if they are visiting, but not otherwise. His wife's father is a retired postal worker. He retired in approximately 2002 and receives a modest pension from the Indian government. His contact with the Indian government is the same as any ordinary citizen.⁴

Applicant and his wife own properties in India. In 1989, Applicant's wife inherited agricultural property from her mother that is valued at approximately \$20,000. They own individually or jointly six other properties in India, including an apartment purchased in 2014. They do not have plans to develop the properties. The apartment will be used to accommodate Applicant and his family when they travel to India. Applicant estimated the current total value of all of the properties to be approximately \$94,000, but this amount could change depending on the market. He testified that they invested in property in India because it was an emerging market and thought it would be a good investment to fund their children's future education expenses. They anticipated selling the property in the future to fund these expenses. If their foreign property is an issue and the U.S. government requested, Applicant would sell the properties. Applicant's wife concurred. Applicant also maintains an Indian bank account opened in 1995 that has a balance of a couple hundred dollars that he uses when he travels to India so he does not have to carry cash. If it is a security concern he would close it.⁵

Applicant's father has a home in India valued at about \$80,000. Applicant does not know if he would inherit the property from his father. If he were to inherit it, he would contact his security officer and disclose the information. He would sell the property if it were a security clearance issue. Applicant testified that he has lived in the United States for 20 years and he has no intention of moving back to India. He and his wife do not provide any family members financial support.⁶

Applicant and his wife own their home in the United States valued at about \$290,000. There is no mortgage on the property. In Applicant's personal financial

³ Tr. 60, 71-75, 87, 91.

⁴ Tr. 42-46, 70-71, 75-76, 87.

⁵ Tr. 47-59 76, 79, 88-89, 93; Answer to SOR.

⁶ Tr. 56-57, 76, 79-81, 92.

statement (PFS), he listed approximately \$1.5 million in assets and no liabilities. He testified that he and his wife live within their means and have worked hard. They participate in family and community activities. They have sufficient assets in the United States to fund their children's future education expenses regardless of their foreign property investments. Applicant would contact his security manager if there was a threat to his family or property in India.⁷

Applicant provided character statements and testimony from coworkers and friends. He is described as honest, trustworthy, dependable, respectful, and reliable. He exhibits an excellent work ethic, outstanding judgment, and has never violated security protocol. He is a dedicated family man. He is loyal to the United States and in the opinion of those providing character evidence, they are confident he would contact the appropriate authorities if there was ever a threat to him or his family. In addition, evidence was provided that Applicant and his family have assimilated into the American culture, and they exhibit the same preferences to entertainment, food, and leisure activities as their neighbors and friends who were born in the United States. Applicant provided a copy of a PFS and a copy of a consolidated credit report reflecting he has an excellent credit score.⁸

India⁹

India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion.

The Indian government generally respects the rights of its citizens, but serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeates the government and security forces, creating an atmosphere in which human rights violations go unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In addition, a number of terrorist groups operate in regions of India that makes travel to these regions dangerous.

The United States recognizes India as key to strategic interests and has sought to strengthen its relationship with it. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist.

⁷ Tr. 76-78, 80-81, 93-94; Answer to the SOR; AE B, C, D.

⁸ Tr. 16-38; Answer to the SOR; AE A, B, C, D, E.

⁹ HE I.

India has a history of being involved in criminal espionage and is an active collector of U.S. economic and proprietary information. India remained on the Office of the U.S. Trade Representative's Priority watch list in 2015, based on its history of trademark counterfeiting and copyright piracy-including one of the highest rates of video piracy in the world, and concerns regarding patents and regulatory data protection. Of particular concern is counterfeit pharmaceuticals produced in India and shipped to the United States, posing serious risk to Americans consumers. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries, and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The United States and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

Policies

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 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, 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(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 not drawn 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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

AG ¶ 6 expresses the security concern regarding foreign influence:

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

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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;

(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;

(d) sharing 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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a), 7(d), and 7(e) require evidence of a "heightened risk." The "heightened risk" required to raise these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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."¹⁰

Applicant's parents, brother, and father-in-law are citizens and residents of India. India's human rights record, terrorism activities, its history of being involved in criminal espionage, and as an active collector of U.S. economic and proprietary information creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion and raise security concerns. I find AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant and his wife have substantial financial interests in India which create a heightened risk of foreign influence or exploitation. I find AG ¶ 7(e) applies.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

¹⁰ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

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. 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 foreign government or the country is known to conduct intelligence operations against the United States. India is a democracy and has a strong partnership with the United States. However, its human rights record and its history of economic espionage raise concerns.

Applicant has lived in the United States since 1997, and his wife has lived here since 2000. They have been naturalized citizens since 2009. Their children were born in the United States. They own their home in the United States. They are loyal to the United States. Except for Applicant's parents, brother, and father-in-law, they do not have close ties with any other family members in India. Applicant and his family have traveled to India in the past to visit their family. They do not intend to return to India to live and likely will not return after their parents pass away. Applicant parents, brother, and his father-in-law in India do not have any unusual affiliation with the Indian government. His father and father-in-law are retired and receive modest government pensions. His brother does not have an affiliation with the Indian government.

Applicant and his wife's contact with family members in India are unlikely to create a risk of foreign exploitation. His father and father-in-law are retired and do not hold positions that raise any unusual security concerns or place them in a heightened risk scenario. His brother works in agriculture and is not in a high-profile job that might be targeted. I find it is unlikely Applicant might be placed in a position of having to choose between the interests of his family, including his brother, and his wife's father in

India and the interests of the United States. I find AG ¶ 8(a) applies. Applicant and his wife have been in the United States most of their adult lives. Their children were born in the United States. They have assimilated into the American culture and have a deep sense of loyalty to the United States. I am confident that Applicant can be expected to resolve any conflicts in favor of U.S. interests. I find AG ¶ 8(b) applies. AG ¶ 8(c) does not apply because Applicant's relationship with his parents and brother, and his wife's with her father is more than casual and infrequent.

Applicant's financial interests are not insignificant. He and his wife own seven properties in India with an aggregate value of about \$94,000. They were inherited or purchased over the years for investment purposes to fund their children's future educational expenses. Applicant's financial interest in India must be balanced with his financial footprint in the United States. Applicant and his wife have substantial financial interests in the United States. They have approximately \$1.5 million in assets, which includes ownership of their home. They have no liabilities and live within their means. Applicant testified that he would divest himself of the Indian properties if the U.S. government requested him to do so. There is no evidence that India targets its citizens or U.S. citizens to obtain protected information. Considering the totality of Applicant's finances and facts about India, I find that Applicant's financial interests in India are unlikely to result in a conflict and potentially be used to influence, manipulate, or pressure him. AG ¶ 8(f) applies.

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(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.

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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 46 years and has been a naturalized citizen of the United States since 2009. He holds a public trust position. His wife is also a naturalized citizen and his children were born in the United States. He has some familial ties and financial interests in India, but they are outweighed by his loyalty to the United States. Applicant provided sufficient evidence to mitigate the security concerns raised under the foreign influence guideline. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence guideline security concerns.

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.f: 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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge