



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00322
)
Applicant for Security Clearance)

Appearances

For Government: Liam Apostol, Esq., Department Counsel
Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 13, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on March 29, 2019, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 24, 2019, and reassigned to me on June 12, 2019. The hearing was convened as scheduled on August 15, 2019.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about India. Without objection, I have taken administrative notice of the facts contained in the request. Without objection, I have also taken administrative notice of the facts contained in a document from the U.S. Department of State titled *U.S. Relations with India*. The facts are summarized in the written request and documents and will not be repeated verbatim in this decision. Of particular note is that India is the world's largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have human rights problems; it has been victimized by terrorist attacks; and restricted, dual-use technology has been illegally exported to India.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer since 2012. He has a bachelor's degree from an Indian university and a master's degree from a U.S. university. He is married with two children. (Tr. at 38, 44; GE 1, 2)

Applicant was born in India to Indian parents. He came to the United States on a work visa in 1999. He was granted permanent residence status (green card) in 2007, and he became a U.S. citizen in 2013. India does not permit dual citizenship, and he renounced his Indian citizenship when he became a U.S. citizen. His wife is originally from India. His older child was born in India, and his younger child was born in the United States. His wife and children are U.S. citizens. (Tr. at 20, 35, 49; GE 1, 2)

Applicant's parents, parents-in-law, brother-in-law, and some extended family members are citizens and residents of India. His father is in his 80s; his mother and father-in-law are in their 70s; and his mother-in-law is in her 60s. His father used to work for the Indian agency responsible for taxes, but he has been retired for some time. His parents-in-law were farmers before they retired. His brother-in-law works for a U.S. corporation. (Tr. at 26, 29, 33, 54-55; Applicant's response to SOR; GE 1, 2)

Before he came to the United States, Applicant bought a share of a parcel of land in India with a friend for about \$2,000. Applicant's share of the property has appreciated to about \$75,000. Applicant anticipates that the local restrictions that have made it difficult to sell the property will be lifted. He plans to sell the property when they are lifted. (Tr. at 55-58; Applicant's response to SOR; Applicant's response to SOR; GE 2)

Applicant's parents' home was severely damaged by a natural disaster. Applicant has sent them about \$200,000 over several years to help them restore the home. He maintained a bank account in India to make it easier to transfer funds to his parents and the contractors working on their home. He had about \$6,000 in the bank account at one point, but now that the construction is complete, the balance is about \$160. He does not know whether his parents plan to leave the house to him as an inheritance. (Tr. at 25-30, 52-53; Applicant's response to SOR; GE 1, 2; AE C)

Applicant maintains frequent contact with his family in India. He also regularly visits them. He visited more often while his parents' home was under construction. (Tr. at 35, 50-51, 54; GE 2)

Applicant has considerable assets in the United States. He has owned his home in the United States since 2005. The current value of the home is about \$290,000. He has about \$90,000 equity in the home, having refinanced the mortgage loan to help pay for his children's education. He has about \$385,000 in retirement accounts. (Tr. at 22-25; AE A, B)

Applicant has no plan to move back to India. Education is important to him and his family. His wife graduated from a U.S. university. His older child is in college with plans to obtain a PhD. His younger child is in high school and equally enthusiastic about education. Applicant expressed his undivided allegiance to the United States, which he considers his home. He credibly testified that his family and any property in India could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so. (Tr. at 21, 31-37, 60-62; Applicant's response to SOR; GE 2)

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 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 notes 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;

(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; and

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

Applicant has family members, including in-laws, who are citizens and residents of India. He has assets in India. India is the world's largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have human rights problems; it has been victimized by terrorist attacks; and restricted, dual-use technology has been illegally exported to India. Applicant's foreign contacts and financial interests create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), 7(e), and 7(f) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

(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.

I considered the totality of Applicant's ties to India. 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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 government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen. His wife and children live in the United States, but he still has family in India, including his parents and in-laws. None of his immediate family members have any current direct connection to the Indian government. Applicant and his wife gave up their Indian citizenships when they became U.S. citizens. He has no plan to move back to India. He expressed his undivided allegiance to the United States, which he considers his home. He credibly testified that his family and any property in India could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so.

I find that Applicant's ties to India are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, life, home, majority of assets, and professional career are in the United States. I find that it is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of India. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable. Applicant's assets in India are small in comparison with his U.S. assets, and could not be used effectively to influence, manipulate, or pressure him. AG ¶ 8(f) is applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence 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.g:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge