



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 19-00269

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: Larry N. Burch, Esq.
03/04/2020

Decision

MASON, Paul J., Administrative Judge:

Applicant's strong bonds to the United States mitigate the foreign influence concerns raised by the foreign influence guideline. Eligibility for security clearance access is granted.

Statement of the Case

On May 2, 2016, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. On July 29, 2017, Applicant provided an interview to an investigator from the Office of Personnel Management (OPM). Following a preliminary review of Applicant's security clearance eligibility, the Department of Defense (DOD) could not make the preliminary affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated April 30, 2019, detailing security concerns under the guideline for foreign influence (Guideline B). The action was taken under Executive Order (E.O.) 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 revised adjudicative guidelines (AG) effective June 8, 2017.

Applicant provided his notarized answer on May 28, 2019. The case was assigned to me on August 2, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 5, 2019, for a hearing on October 3, 2019. The hearing was held as scheduled. The Government's two exhibits (GE) 1 and 2, and Applicant's 21 exhibits, (AE) A at 1-21, were entered into evidence without objection. One hearing exhibit (HE) 1 (administrative notice) was marked. On October 7, 2019, Applicant submitted a one-two-page document that was entered into evidence without objection. DOHA received the transcript (Tr.) and the record closed on October 17, 2019.

Administrative Notice

I have taken administrative notice of certain relevant facts related to the Republic of India. These facts come from source material published by the Department of State and Department of Justice. The facts are limited to matters of general knowledge and not subject to reasonable dispute.

Rulings on Procedure

At the beginning of the hearing, Applicant objected to the September 2019 PSI (GE 2). After the Government recommended a recess for Applicant to review the exhibit, Applicant's attorney withdrew his objection to the exhibit. GE 1 and 2 were admitted into evidence.

During cross-examination of Applicant, testimony about Applicant's nephew prompted the Government to amend the SOR with the addition of the following allegation: 1.i - "Your nephew (your 65-year-old brother's son) is a citizen and resident of India." Applicant objected based on the lack of notice and the nephew does not work for the Indian government. The objection was overruled and the amendment was granted. (GE 1 at 32-40; Tr. 85-88)

Findings of Fact

In his answer to the SOR, Applicant admitted SOR 1.a through 1.g, with explanations. He denied 1.h, averring that the account belongs to his wife.

Applicant, 56 years old, was born in India in 1964. After receiving a bachelor's degree in science in India, he immigrated to the U.S. in August 1992, and enrolled in an American university in the same month. He came to this country because the computer education was the best in the world. In July 1995, he was awarded a master's degree in applied mathematics and computer science. (GE 1 at 7-10; GE 2 at 5; Tr. 19-20; AE 14)

Applicant's first job began later in 1995 in information technology (IT) developing internet-based operations. Applicant married his wife in 1996, a citizen and resident of India. She immigrated to the US in the same year. Applicant worked for several

American contractors and then moved to the region in 2004, and his son was born in the same year. He worked for several governmental agencies developing security mechanisms to monitor immigrants or control access of information. Currently, Applicant is working for an agency developing an authorization system for access to data. From 2007 until the present, Applicant has held a public trust clearance. (GE 1 at 31; Tr. 24-41)

SOR 1.a and 1.b – Both brothers are citizens and residents of India. Applicant's 70-year-old brother is retired from his position as the Registrar at the Department of Collegiate Education. He held the position for 35 years before retiring in 2007. (GE 1 at 32; Tr. 47-50; AE 1)

Applicant's 64-year-old brother retired in 2015 from his position at the Indian Astrophysics Institute. The brother began working as a scientist at the institute, but before he retired, he was working in the payroll department. Applicant contacts each brother by email or a secured encrypted device every two weeks to three months. Applicant last saw both brothers in May 2017 at his niece's wedding. (GE 32-40; Tr. 51, 71-78)

SOR 1.c – Both sisters, citizens and residents of India, are homemakers. Applicant contacts his 69-year-old sister once or twice a year, and his 61-year-old sister once every three months. The sisters have children, but Applicant has contact with his 65-year-old brother's son (Applicant's nephew). Applicant last saw them in May 2019. (GE 1 at 32-40; Tr. 78-79)

SOR 1.d – Applicant's father and mother-in-law are citizens and residents of India. His father-in-law is 83 years old and retired from a telecommunications career at an Indian-owned television station. Applicant's mother-in-law, 74 years old, has always been a housewife. Applicant contacts them on special occasions. His wife contacts them every two weeks. (May 2019 answer to SOR; Tr. 88)

SOR 1.e – Applicant's brother-in law, his wife's brother, is 52 years old and is a citizen and resident of India. He works for an American company in the country. He visited Applicant in the US in 2006, 2008, and 2010. Applicant's contact is only on special occasions. Applicant last saw him in May 2019 at the niece's wedding. The brother-in-law knows that Applicant needs a security clearance. (Tr. 89-91; AE 4)

SOR 1.g – Applicant's sister-in-law, 54years old, is a citizen and resident of India. She received a degree to practice medicine indigenous to the country of India. Applicant's contact with her is infrequent. The last face-to-face contact occurred when the sister-in-law visited Applicant's family in July 2019. (Tr. 91-92)

SOR 1.g – Applicant co-owns an Indian home worth approximately \$200,000. He receives \$500 in monthly rent. The house is managed by Applicant's 65-year-old brother. In 2003, Applicant purchased a lot in India. In 2006, he began building a house for his mother. The house was completed in 2007. Applicant's disabled mother and his

65-year-old brother moved into the second floor. His brother managed the property by collecting the rent which he placed in Applicant's Indian bank account.

In 2016, Applicant's mother passed away and his brother moved out. Applicant continues to collect the rents, but is planning to sell the house to his nephew (the 65-year-old brother's son). The sale was to be in November 2019. (May 2019 answer to SOR; AE 5-12; Tr. 81, 97)

SOR 1.h – You own an Employee Provident Fund Account valued at approximately \$50,000. Before she immigrated to the US in 1996, the Indian employer of Applicant's wife opened a retirement account for her. Applicant never had any interest in the account. She closed the account in March 2018. The documentation shows the last transaction was in September 2018. (May 2019 answer to SOR; Tr. 103; AE 13)

SOR 1.i – Applicant's nephew (his 65-year-old brother's son) is a citizen and resident of India. The nephew is 32 years old. He has a bachelor's degree in engineering. Just after he completed his degree he began working for a global internet company in 2007. His job is developing news applications. For about three years, he lived and worked in the US, but in late 2017, he transferred his work to India. He is not a US citizen. He has never worked for the Indian government there is no requirement for service in the Indian military. He purchased the house identified at SOR 1.g. Applicant anticipated the closing process on the house will have concluded in November 2019. (Tr. 80-87) See AE A at 2.

Character Evidence

Administrative Notice – Republic of India

India is a multiparty, parliamentary democracy with a bicameral legislature. The United States and India share common values such as the rule of law, respect for diversity, and a democratic form of government. In 2009, the United States and India introduced a strategic dialogue with the objective of strengthening cooperation in several areas, including energy, climate change, trade, education, and counterterrorism. The US and India are committed to combatting money laundering and terrorism financing.

India is considered an active countries involved in economic and industrial espionage. The country is among the most active in US trademark counterfeiting and copyright privacy. The Indian states of Jammu and Kashmir continue to grapple with terrorist and insurgent incidents. Active ant-western terrorist groups, including Islamist extremist groups target public places frequented by Americans and other westerners.

Indian security forces continue to violate human rights with extrajudicial killings, torture, rape, and pervasive corruption at all government levels.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

- (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; 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 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.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. As set forth in AG ¶ 7(b), connections are only disqualifying if they create a potential conflict of interest between Applicant's security duties and his desire to assist his foreign family member. As the guideline indicates, the country in question must be considered. Terrorist organizations, including the Taliban and al-Qaeda, continue to operate against the United States and Afghan interests within the country. Afghanistan has a poor human rights record that is adversely affected by the country's terrorism and violence. Applicant's parents, his sister, his uncle and his brother-in-law are citizens and residents of Afghanistan. His uncle is a professor at a government-operated university. Applicant's brother is a citizen of Afghanistan and resident of Germany where he is attending school. He contacts his parents on a weekly to occasional basis by phone. His contact with his siblings is quarterly. Applicant's contact with his uncle was annual until two and one-half years ago.

Applicant provides at least \$200 a month to his parents because they are elderly with health problems. They are not employed and receive no pension or retirement benefit. Applicant's financial help to his parents demonstrates his love and affection for them, but is also a potential tool for manipulation and pressure by a terrorist insurgent or government operative to exert pressure on him through a family member. The level of contacts that Applicant has with his family members in Afghanistan, combined with the level of continuing violence committed by the Taliban and other terrorist groups against the Afghan government, Afghan citizens, U.S. interests, and those who cooperate and assist the United States military, create a heightened risk of foreign influence under AG ¶ 7(a). AG ¶ 7(b) is applicable because Applicant's connections to his foreign family members create potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to help that his family members by providing that information.

Conditions under AG ¶ 8 that could mitigate security concerns include:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the

individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Except for Applicant's uncle, none of Applicant's other family members are affiliated with the Afghan government or military. Although his uncle is employed as a professor at university operated by the government, Applicant has not spoken to him for two and one-half years, and has intentionally not contacted to him to eliminate any chance of disclosing his location in the country. Nevertheless, the level of contact with his foreign family members precludes the applicability of AG ¶ 8(a). AG ¶ 8(c) does not apply because foreign contacts between an applicant and his foreign family members are not considered casual and infrequent. I do not consider his regular telephonic contact with his family members to be casual and infrequent.

AG ¶ 8(b) applies based in large part on his contributions to the national security of the United States. The DOHA Appeal Board has held that, as opposed to simple statements of intent which carry little weight, an applicant's demonstrated willingness to place himself at risk for United States defense interests is significant evidence that can justify a favorable result in a Guideline B case. *See, e.g.* ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008); ISCR Case No. 04-02511 at 4 (App. Bd. Mar. 20, 2007); ISCR Case No. 10-05329 at 3 (App. Bd. Oct. 17, 2011). The Appeal Board explained that an applicant's service to the United States at the risk of his own safety as important evidence to show that he could be expected to resolve any conflict in favor of U.S. interests. *See* ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9, 2008). Here, at least 14 character references indicate that Applicant has faithfully and courageously supported U.S. forces since 2004. On many occasions before and after he immigrated to the United States, he executed his linguist responsibilities in difficult combat zones within Afghanistan. His continuing support of U.S. forces demonstrates that he is unlikely to capitulate to potential pressure related to his family members living in Afghanistan. Based on his 13-year record of service to U.S. forces, at times putting U.S. interests ahead of his own safety, I conclude that he will resolve any further conflict of interest in favor of the United States.

Whole-Person Concept

I have examined the evidence under the foreign influence guideline in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Following completion of an Afghan high school in 2001, Applicant began working in the country in 2004 as a local national interpreter for the U.S. military. In 2007, he applied for an SIV to the United States, and he immigrated to the United States in 2008 as he continued to work as a cultural advisor and linguist for the U.S. military. He became a U.S citizen in March 2014. Applicant continues to provide linguist services in Afghanistan for the U.S. military. The impressive character references from U.S. commissioned and non-commissioned officers, the certificates of achievement and appreciation, along with Applicant's growing ties to the United States, demonstrate that Applicant will resolve any conflict of interest in favor U.S. interests. Considering the evidence from an overall commonsense point of view, Applicant has met his heavy burden of mitigating the security concerns based on the foreign influence guideline.

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.i: For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge