



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01831
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

08/04/2020

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 September 30, 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 October 31, 2019, and requested a hearing before an administrative judge. The case was assigned to me on June 26, 2020. The hearing was convened as scheduled on July 14, 2020.

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. 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 47-year-old part-owner of a defense contracting company. He is applying for a security clearance for the first time. He has a bachelor's degree from an Indian university. He is married with two children. (Transcript (Tr.) at 21; GE 1)

Applicant was born in India to Indian parents. He married his wife in India a few months before he came to the United States in 1998. He became a U.S. citizen in 2008. 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. She is now a U.S. citizen, working for the U.S. Government. Their children were born in the United States. Their children attend or are about to attend college in the United States. (Tr. at 22, 42-43; GE 1)

Applicant's parents-in-law are deceased. His parents and sister are citizens and residents of India. His father is a retired professor, and his sister is a teacher. His mother does not work outside the home. (Tr. at 22, 38-39; Applicant's response to SOR; GE 1, 2)

Applicant started his first business in the United States in 2003. He sold his share of the business in 2009. He worked part time for the company that acquired his company until 2015. He currently is part owner of three U.S. businesses. He became a partner in a property management company in 2009. The defense contracting company was started by two of Applicant's friends. Applicant became a partner in the company in 2013. (Tr. at 22-23; GE 1, 2; AE A)

Applicant is principal owner (50%) and chief executive officer of an information technology (IT) and engineering staffing company that was started in 2015. The company provides IT professionals and engineers to other companies. The IT professionals and engineers are employees of Applicant's company, but work at various other companies in the United States. Applicant's company has a subsidiary staffing company that provides healthcare workers to companies and healthcare facilities. His company also has a wholly owned subsidiary in India that works at placing the company's IT professionals and engineers in the United States at companies in the United States. The Indian subsidiary is purely support for the U.S. business. It does not place any individuals in Indian businesses, and it does not generate any income in India. Applicant estimated that the company has about 700 employees in the United States, which includes about 20 permanent employees, with the remainder of the

employees working at other companies. The company has about 320 employees in India. Applicant estimated the value of his share of the company at \$7 to \$10 million. The company does not have any defense contracts, and there is no plan to pursue any in the future. (Tr. at 23-31; Applicant's response to SOR; GE 1, 2)

Applicant owns 50 percent of the defense contracting company. That company is much smaller than his staffing company. It is primarily for Applicant and his partners to work as contractors. He estimates the value of his share of that company at \$20,000. (Tr. at 31-33; GE 1, 2)

Applicant frequently talks to his parents and sister, and he regularly travels to India to visit his family and to oversee his staffing company. He periodically gave money to his parents, and he maintains bank accounts in India, including at least one joint account with his father. The accounts were used to facilitate the transfer of funds to his parents and for Applicant to use when he is in India. About five to seven years ago, Applicant gave his father about \$50,000 to help renovate his house and to replace an old car. Applicant has less than \$5,000 in his Indian accounts at present. He estimates his total net worth at about \$15 million. (Tr. at 33-41; Applicant's response to SOR; GE 1, 2; AE B, C)

Applicant expressed his undivided allegiance to the United States, which he considers his home. He stated, "[t]his is my present, this is my future, this is where my kids [were] born." He credibly testified that his family and assets in India could not be used to coerce or intimidate him into revealing classified information. (Tr. at 43-44)

Applicant is active in his community. He submitted letters attesting to his strong moral character, responsibility, dependability, work ethic, dedication, generosity, and integrity. (AE A)

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; 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's parents and sister are citizens and residents of India. He has several thousand dollars in bank accounts in India. His staffing company has a wholly owned subsidiary in India that works at placing the company's IT professionals and engineers in the United States at companies in the United States. 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 family and financial interests create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(e) 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 are U.S. citizens and residents, but his parents and sister are citizens and residents of India. Applicant is a successful businessman with a net worth of about \$15 million. His staffing company's wholly owned subsidiary in India is purely to support his U.S. business, not unlike when companies maintain call centers overseas to support their U.S. businesses.

Applicant and his wife gave up their Indian citizenships when they became U.S. citizens. He expressed his undivided allegiance to the United States, which he considers his home. He credibly testified that his family and financial interests in India could not be used to coerce or intimidate him into revealing classified information.

I find that Applicant's ties to India are outweighed by his deep and long-standing relationships and loyalties in the United States. 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. AG ¶ 8(f) is partially 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.e:	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