



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02657
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant was born in India. Before coming to the United States, he spent 22 years as a local employee at a United States consulate in India. He has lived in the U.S. since 2008 with his family and been a U.S. citizen since 2013. He has held a position of public trust for several years as a State Department contractor. He now seeks access to classified information. The foreign influence security concerns about Applicant’s family connections to both India and Pakistan are mitigated through the overwhelming evidence of Applicant’s long service to the U.S. Government, his long and well-established family ties to the United States, and his strong, whole-person character witness evidence presented by several senior U.S. diplomats and other State Department employees. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 4, 2017. On December 16, 2019, the Department of Defense Consolidated Adjudications Facility

(DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under foreign influence. The DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on February 11, 2020, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on August 18, 2020. On September 18, 2020, DOHA issued a notice scheduling the hearing for October 15, 2020.

On September 23, 2020, I issued a Case Management Order to the parties by e-mail. It largely concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic. The parties were ordered to submit their proposed exhibits in advance of the hearing, and they did so.

Before the hearing, Applicant provided the names and contact information for ten character witnesses, one of whom would testify live (and did so), and nine of whom were available to testify by phone. All of Applicant's proposed witnesses also provided letters of reference (AE B). All of them were also current or former diplomats, Foreign Service officers, or other employees of the U.S. Department of State. Each proposed witness would attest to Applicant's character largely on the basis of their professional relationship with him. *Sua sponte*, I requested that Applicant limit the number of his character witnesses on the grounds that some of the testimony would likely be cumulative. (HE III; Tr. 16-20)

The hearing convened as scheduled. Government Exhibits (GE) 1-2 were identified and admitted in evidence without objection. Applicant's Exhibits (AE) A through C were also identified and admitted without objection. AE D was marked but was not admitted as it did not relate to Applicant. (Tr. 36-41) AE A was attached to Applicant's Answer to the SOR. Applicant and one other witness testified live. Five character witnesses testified by phone. I held the record open after the hearing to allow Applicant the opportunity to submit additional evidence. On October 23, 2020, he submitted several documents, all concerning his finances, along with a narrative statement in his e-mail. I marked the e-mail and documents as AE E, and the exhibit was admitted without objection. The record closed on October 30, 2020. DOHA received the hearing transcript (Tr.) the same day.

Request for Administrative Notice

The Government submitted written requests that I take administrative notice of certain facts about India and Pakistan. (Administrative Notice (AN) I and AN II) Without objection, I have taken administrative notice of certain facts contained in the requests that are supported by source documents from official U.S. Government publications.

Where appropriate, I have taken notice of updated and current information from the State Department website, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) (“Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.”) These facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the Guideline B allegations (SOR ¶¶ 1.a-1.e) and included a narrative statement with his Answer. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is now 53 years old. He was born in India. He graduated from high school in India in 1987, and attended two years of college there, earning an associate’s degree. (Tr. 42, 56-57; GE 1) He and his wife have three grown children. His wife and children are now U.S. citizens and residents.

From 1986 until 2008, Applicant was employed at a United States consulate in India as a local employee. He started working in the mailroom and later became a contracting agent. (Tr. 51) He was not a U.S. State Department employee, and does not receive a State Department pension for this work. He receives a minimal pension of about \$20 a month through an Indian insurance company. (Tr. 42-43, 45, 54-55, 59-61, 111-112) This was confirmed by Mr. H, Applicant’s character witness, a retired State Department employee. (Tr. 117-118)

In 2008, Applicant was granted a Special Immigrant (SI) Visa by the U.S. Ambassador to India. Several witnesses testified that granting of such a visa is rare and is a testament to Applicant’s character and value to the United States. (Tr. 42-43, 45, 54, 123-124) SI Visas are granted to those who have been “exceptionally loyal and [who] would have provided exceptional service to the U.S. Government.” (Tr. 120)

Applicant and his wife married in India in 1991. (Tr. 58) Their three children are all in their 20s. They were all born in India. (GE 1) They immigrated to the United States in 2008. Applicant testified that he came to the United States “for the betterment of my children.” (Tr. 62) His children all live at home. His son works in information technology. One daughter recently graduated from college and is now a teacher. His younger daughter is in college. (Tr. 46-48, 58-59; GE 1)

Applicant became a U.S. citizen in 2013. He is not a dual citizen, though as a native of India, he maintains an Indian overseas identification card. (Tr. 62-65).

From 2008 until 2011, Applicant worked at a large retailer and later at a pharmacy in the U.S. Since 2011, he has worked for State Department contractors as a project manager. (Tr. 65-67, 102-104; GE 1) In 2015, he was granted eligibility for a

position of public trust and eligibility for access to sensitive U.S. Government information, as Department Counsel confirmed after the hearing. (Answer, Tr. 67, 102; HE 3) Applicant now seeks a security clearance. (GE 1)

Applicant's father worked for 35 years (1951-1986) as a local employee at the same U.S. consulate in India where Applicant later worked. (AE A) Applicant's father is now deceased. Applicant's widowed mother, age 84, lives in India. (SOR ¶ 1.a) She never worked outside the home. She receives a pension from the U.S. Government due to her husband's career at the consulate as a State Department employee. (Tr. 35-43, 45, 49, 52-53, 56, 73-74, 110-112) (Mr. H testified that State Department regulations changed in the 1980s, which is why Applicant's father was considered a retired State Department employee entitled to a U.S. Government pension, while Applicant is not). Applicant testified that he talks to his mother by phone about once a week. He sends her about \$500 a year. (GE 1; Answer; Tr. 74-75)

SOR ¶ 1.b concerns two of Applicant's brothers (B1 and B2) and three of his sisters (S1, S4, and S5). All of these siblings are Indian citizens, and all but one of them reside there.

B1 is a citizen and resident of India. He works for an oil company. He is married and has children. Applicant talks to B1 about once or twice a month. (Tr. 75-76; GE 1) B2 is an Indian citizen, but he lives in Dubai, where he works as a mechanic. Applicant speaks with B2 a few times a year, on religious holidays. (Tr. 77, 107-108; GE 1)

S1 (born in 1960) lives in a large city in India. She is widowed. Applicant speaks with her on about a quarterly basis. (Tr. 77-78; GE 1)

S4 is a citizen and resident of India. In 1965, when S4 was born, her mother was travelling in Pakistan, and was unable to return to India, as the two countries were then briefly at war. S4 is not a citizen of Pakistan. S4 is widowed. Applicant speaks to her quarterly. (Tr. 78-80, 107)

S5 is a housewife in a large city in India. Her husband works in construction. Applicant speaks to S5 about every few months. (Tr. 80-81; GE 1)

Applicant has two other sisters, both of whom are citizens and residents of Pakistan. (SOR ¶ 1.c) S2 (born in 1962) and S3 (born in 1964) were born in India, but are now citizens and residents of Pakistan because they married two Pakistani brothers who were friends of the family of Applicant's father in Pakistan. Applicant contacts S2 and S3 about every six months. One of their husbands works as contractor at a shipyard. The husband of the other sister is deceased. (Tr. 82-87, 107-108; GE 1) There is no indication in the record that Applicant has ever travelled to Pakistan to visit them. (Tr. 94)

SOR ¶ 1.e alleges that Applicant provides about \$1,600 in annual financial support to some of his family members in India and Pakistan. Applicant testified that he

has also sent some money to his wife's family members when they have been out of work in the past. (Tr. 87-93)

SOR ¶ 1.d alleges that Applicant has "several friends and associates who are citizens of India." SOR ¶ 1.d does not describe or suggest any specific person or any bond of affection or obligation (or even a level of contact Applicant might have with such a person that might suggest such a bond). Nor is it alleged that any of these unspecified persons are currently residing in India. Applicant "admitted" SOR ¶ 1.d in his Answer but did not specifically address any such "friends and associates" either in his Answer or in his testimony other than to note that he has Indian friends who worked with him at the consulate. (Tr. 50-51)

Since coming to the United States in 2008, Applicant has returned to India twice. In 2014, he travelled there with his wife and children after his mother-in-law passed away. He also travelled to India with his family in 2019. He saw (and stayed with) his mother and his siblings in India. He did not travel to Pakistan. (Tr. 93-94, 98-100)

During the period when he worked as a local employee at the U.S. consulate, Applicant was subject to routine background investigations. On occasion, like other such employees, he was harassed by local entities. At the time, the Indian state where the consulate was located was subject to Communist influence. According to Mr. H, this is no longer the case. (Tr. 95-98, 108-109) Applicant disclosed these incidents of harassment and attempts at exploitation and duress to embassy authorities, as he had been trained to do. (Answer; Tr. 97-98) Mr. H testified the consulate had a system in place to protect its local employees from local harassment. (Tr. 126)

Applicant has a \$73,000 annual salary. (Tr. 104; AE E) He and his wife own their home, which they purchased in 2017, and they have ample financial assets in the U.S. (Tr. 69-72) He holds no assets in India. (Tr. 67) His wife owns two undeveloped parcels of property outside of the city in India where she grew up. They have little value. (Tr. 68-69, 105-106; GE 1; AE E)

Applicant's character witnesses included a current United States ambassador and two former U.S. consul generals, as well as several other current and former U.S. Foreign Service officers and State Department employees. All of them knew or worked with Applicant at the U.S. Consulate in India when Applicant worked there as a local employee. Some of them have maintained more recent contact with Applicant.

Mr. H is retired from the State Department after 42 years of service. He is now a State Department contractor. (Tr. 115-116; AE B) Mr. H worked at the consulate in India from the early 1990s to 2001 and supervised Applicant there. He attested that he and the Applicant's character witnesses were "without exception" impressed by his loyalty and integrity and that Applicant was universally held in high regard, and was highly trusted. (Tr. 119-125)

Mr. H also testified that any local employee is subject to a background check with local police forces and through U.S. intelligence. There are also stringent reporting requirements, as well as a “zero tolerance” policy for all local embassy employees. Applicant followed all reporting rules appropriately when he was at the consulate. (Tr. 127) Mr. H. closed his testimony by affirming that, “If I did not believe absolutely in [Applicant’s] judgment, trustworthiness, and reliability, I wouldn’t be here today.” (Tr. 128)

W1 is a current State Department employee. She knew Applicant at the consulate (2005-2008). She has had some contact with him at State Department headquarters in more recent times. She offered a strong endorsement of Applicant’s character and loyalty, while recognizing that Applicant cares for his family in India. (Tr. 131-138; AE B)

W2 is retired from both the State Department and the U.S. Navy. He worked with Applicant at the consulate from 2002 to 2005. (AE B) He attested to Applicant’s attention to detail and dedication to the United States. He said Applicant’s “overall performance and his overall attitude was one that I wish others would emulate. . . . I don’t think you could ask for a more trusted person to be doing what he’s doing.” (Tr. 138-143)

W3 was the consul general at the consulate in India (the senior U.S. foreign-service officer on post) during a period when Applicant was there. She attested to Applicant’s diligence, competence, and trustworthiness under difficult circumstances. Applicant provided valuable service to the U.S. mission in India in getting information on threats in the region at the time. W3 stated that “there are few persons in the greater universe of the U.S. Mission throughout India who deserved a Special Immigrant Visa” and she strongly endorsed Applicant’s eligibility for a clearance. (Tr. 143-147; AE B)

W4 was also a consul general at the consulate in India during the period when Applicant was there. W4 remains employed by the State Department as a “Diplomat in Residence.” He testified that Applicant was one of the best employees at the consulate. He maintained a positive attitude, and was always thorough and diligent. He was a leader among the Muslim employees at the consulate and worked to ensure a harmonious relationship among local religious groups there (Christian, Hindu, and Muslim). Applicant is a dedicated family man, and his family connections in India and Pakistan do not detract from his loyalty to the United States. (Tr. 148-153; AE B)

Applicant’s final witness, W5, is a current U.S. Ambassador. He testified by phone from his post overseas. He is a career State Department foreign-service officer. He knew Applicant at the consulate, and they have kept in casual touch since their time there. W5 noted that Applicant’s judgment, conduct, and suitability were never in question during the time they worked together. He offered a strong recommendation. (Tr. 169-174; AE B)

I also considered the reference letters of the character witnesses who testified at the hearing, as well as the letters from those who did not. They all offered similar, and strong, endorsements of Applicant's character, value to the United States, judgment, trustworthiness, reliability, and overall suitability to hold a clearance. (AE B)

Republic of India (India): (AN I)

The Republic of India (India) is a multiparty, federal, parliamentary democracy with a bicameral legislature. The president is the head of state, and the prime minister is the head of government. India has a history of economic and industrial espionage against the United States. In its administrative notice filing, the Government provided several examples of criminal cases brought in recent years by the U.S. Department of Justice concerning export enforcement relating to India.

The State Department has issued a "Do Not Travel" warning (Level 4) for India due to the COVID-19 pandemic, and a warning that travelers to India should "Exercise Increased Caution" (Level 2)

India continues to experience terrorist and insurgent activities that may affect U.S. citizens directly or indirectly. Anti-Western terrorist groups, some on the U.S. government's list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, Indian Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. Past attacks have targeted public places, including some frequented by Westerners, such as luxury and other hotels, trains, train stations, markets, cinemas, mosques, and restaurants in large urban areas. Attacks have taken place during the busy evening hours in markets and other crowded places, but could occur at any time. Attacks are usually more frequent around major holidays. The Maoists (also known as "Naxalites") are the most active insurgent group in India. The Naxalites typically attack Indian government officials, but have also derailed trains, targeted government buildings, such as police stations, and conducted other criminal activity.

According to the U.S. Department of State, the most significant human rights problems in India during 2019 included unlawful and arbitrary killings, extrajudicial killings perpetrated by police; torture by prison officials; arbitrary arrest and detention by government authorities; harsh and life-threatening prison conditions; political prisoners in certain states; restrictions on freedom of expression and the press; frequent reports of widespread corruption at all levels of government; violence and discrimination targeting minorities based on religious affiliation or social status; and forced and compulsory labor including bonded labor. A lack of accountability for official misconduct persisted at all levels of government, contributing to widespread impunity. Corruption is present at all levels of government.

Under a mass electronic surveillance data-mining program, Indian governmental agencies can monitor electronic communication in real time without informing the subject or a judge. The program gives Indian agencies centralized access to the

telecommunications network and the ability to hear and record phone calls, read private e-mails and text messages, and track geographical locations of people in real time.

The Islamic Republic of Pakistan (Pakistan): (AN II)

Pakistan is a federal parliamentary republic. The prime minister is head of government, and the president is head of state. The country has endured direct military rule for nearly half of its time as an independent nation. The United States has had diplomatic relations with Pakistan since Pakistan's creation in 1947. Their relationship has been guided by their common interests in a peaceful, stable, and prosperous region.

The U.S. State Department advises American citizens to reconsider travel to Pakistan (Level 3) due to COVID-19, the risk of terrorism, and sectarian violence. The United States remains concerned about the continued presence of terrorist and other extremist groups in Pakistan. Terrorist groups continue plotting attacks in Pakistan. A local history of terrorism and ongoing ideological aspirations of violence by extremist elements have led to indiscriminate attacks on civilian as well as local military and police targets. Terrorists may attack with little or no warning, targeting transportation hubs, markets, shopping malls, military installations, airports, universities, tourist locations, schools, hospitals, places of worship, and government facilities. Terrorists have targeted U.S. diplomats and diplomatic facilities in the past.

The State Department's most recent human-rights report on Pakistan reflects the reported commission of human rights violations by elements within Pakistan and the Pakistani government. The most serious human-rights problems in Pakistan include extrajudicial and targeted killings, disappearances, torture, the lack of rule of law, and sectarian violence. Government corruption is a serious problem, and the lack of accountability and failure to prosecute these abuses has led to a culture of impunity.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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.” 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, 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 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 that an applicant may deliberately or inadvertently fail to 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 Exec. Or. 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.”

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

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, 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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. It 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.

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

Applicant’s mother and several siblings are citizens and residents of India, and he has two sisters who live in Pakistan. The serious, human-rights issues, the ongoing threat of terrorism there, and the governments’ inability to stem corruption in both India and Pakistan all create a “heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” They also create a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

It is not disqualifying under Guideline B for an Applicant to send money to foreign family members, even though doing so may be evidence of a familial bond. SOR ¶ 1.e is therefore found for Applicant.

SOR ¶ 1.d alleges that Applicant has “several friends and associates who are citizens of India.” No specific person is identified, nor is it alleged that such persons even reside in India. Even though India is established as a “heightened risk” country, SOR ¶ 1.d does not describe or suggest any specific person or any bond of affection or obligation (or even a level of contact Applicant might have with such a person that might suggest such a bond). Having unspecified friends or associates in a heightened-risk country is not disqualifying. SOR ¶ 1.d is found for Applicant, as no disqualifying conditions are sufficiently alleged or established.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude 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

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

Applicant has several immediate family members who are citizens and residents of India and has two sisters in Pakistan. In light of the administratively noticed facts about those countries and the heightened risk shown, AG ¶ 8(a) has limited applicability.

Applicant has frequent contact with his mother and fairly regular, though less frequent, contact with his siblings. It cannot be said that his relationships with his immediate family members are casual. AG ¶ 8(c) does not apply.

The evidence in support of AG ¶ 8(b), however, is overwhelming. Applicant, like his father before him, served as a valued and trusted local employee at a U.S. consulate in India for many years. He was subjected to harassment from local influences, and by all accounts acted properly, reporting any such contacts to appropriate embassy authorities. Even before becoming a U.S. citizen, he had established a long track record of trustworthiness and acting in the best interests of the United States. It was for this reason that he was granted a SI visa in 2008 by the U.S. Ambassador. Applicant and his family subsequently immigrated to the U.S. to afford them a chance at a better life. He began working as a State Department contractor in 2011, even before becoming a U.S. citizen in 2013.

Applicant has held a position of public trust as a State Department contractor, affording him eligibility for access to sensitive information, since 2015. While this is not dispositive, it is nonetheless a significant fact in Applicant's favor, as there is nothing in the record to suggest a substantive change of circumstance that warrants denial of access to classified information now.

Applicant also presented significant and strong whole-person character evidence through his witnesses and their reference letters (including from those who did not testify). Those witnesses conveyed and communicated their strong trust in Applicant to

act in the best interest of the United States. Their testimony and evidence serves to bolster Applicant's years-long track record of acting in that fashion.

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. 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(a), 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. I observed Applicant's demeanor while he testified. Applicant was an impressive and candid witness. Applicant presented a strong case in mitigation and in support of his request for access to classified information. I also found his witnesses highly credible, and give significant weight to their testimony and their State Department backgrounds. After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), the foreign influence security concerns about Applicant's family connections to both India and Pakistan are mitigated through the overwhelming evidence of Applicant's long service to the U.S. Government, his long and well-established family ties to the United States, and his strong whole-person character witness evidence presented by numerous senior U.S. diplomats and other State Department employees.

The record evidence therefore leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline B, 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: AGAINST APPLICANT

Subparagraphs 1.a-1.e: 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's eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge