



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



In the matter of:)
)
 1) ISCR Case No. 20-02859
)
 Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

01/25/2023

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 December 7, 2021, 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 and requested a decision based on the written record in lieu of a hearing. On March 22, 2022, she changed her request to a hearing before an administrative judge. The case was assigned to me on September 26, 2022. The hearing was convened as scheduled on December 14, 2022.

¹ Applicant's first name was misspelled in the SOR.

Evidence

Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through M, 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. On my own motion without objection, I have also taken administrative notice of the facts contained in the U.S. State Department fact sheet titled "U.S. Relations with India."² The pertinent facts are summarized in the written request and the fact sheet 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. 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 41-year-old consultant for a defense contractor. She is applying for a security clearance for the first time. She attended college in India and earned a master's degree from a U.S. university in 2007. She is married with two children. (Transcript (Tr.) at 14-16, 23; GE 1; AE L)

Applicant was born in India to Indian parents. She married her husband in India in 2003. He was an Indian citizen living in the United States as a permanent resident at the time. She came to the United States in 2003 after they married. She and her husband became U.S. citizens in 2018. India does not permit dual citizenship, and they renounced their Indian citizenships when they became U.S. citizens. Their children were born in the United States. (Tr. at 14-15, 22, 30; GE 1; AE B)

Applicant's mother is deceased. Her brother lives in the United States as a permanent resident. Her father and parents-in-law are citizens and residents of India. Her father and father-in-law are retired. Her father is wealthy and has no need for support from Applicant. Applicant regularly communicates with her family and in-laws in India. She visited them usually about every other year, but she has not been to India since 2019. Her in-laws visited Applicant and her husband in the United States for about six months in 2020. (Tr. at 17-18, 23-31; Applicant's response to SOR; GE 1; AE I)

Applicant received property from her family in India in about 2002. She estimated the value of the property at \$75,000. Her husband also owns property in India with an estimated value of \$200,000. They are attempting to sell their properties in India. She has a bank account in India with a balance of about \$5,000. She plans to close the

² See <https://www.state.gov/u-s-relations-with-india/>. A copy is attached to the record as Hearing Exhibit (HE) IV.

account the next time they are in India. (Tr. at 19-21, 27-28; Applicant's response to SOR; GE 1; AE M)

Applicant earns a good salary. Her husband is also successful. Applicant and her immediate family have lived in the same house for almost 16 years. It has an estimated value of \$500,000, and they own it outright. Their assets in the United States total about \$3 million. She is involved in her children's athletic pursuits. (Tr. at 16-17, 20, 29; AE G, J, K)

Applicant expressed her undivided allegiance to the United States and her love for this country. She stated that this is "the land of opportunities." She credibly testified that her family and assets in India could not be used to coerce or intimidate her into revealing classified information. (Tr. at 22, 31)

Applicant submitted documents and letters attesting to her excellent job performance and strong moral character. She is praised for her work ethic, trustworthiness, dedication, and honesty. (AE D-F)

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's father and parents-in-law are citizens and residents of India. She and her husband own property 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. 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, both individually and through her husband. 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. Her husband and children are U.S. citizens and residents. She and her husband gave up their Indian citizenships when they became U.S. citizens. They have been quite successful and have substantial assets in the United States. She expressed her undivided allegiance to the United States and her love for this country. She credibly testified that her family and financial interests in India could not be used to coerce or intimidate her into revealing classified information.

I find that Applicant's ties to India are outweighed by her deep and long-standing relationships and loyalties in the United States. It is unlikely she 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 she can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), and 8(f) are 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. I also considered her favorable character evidence.

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.d:	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