



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



In the matter of:)
)
) ISCR Case No. 20-00145
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

February 27, 2023

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing dated February 3, 2017. On May 24, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR on August 1, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 6, 2022. DOHA issued a notice of hearing on September 14, 2022, and the hearing was convened as scheduled on November 8, 2022. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. Applicant offered no exhibits, but testified on his own behalf. The record remained open until close of business on November 22, 2022, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through E, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 2022.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of India. Department Counsel provided a 6-page summary of the facts, supported by 5 Government documents pertaining to India, identified as HE 1. The documents provide elaboration and context for the summaries. Applicant had no objection. (Tr. p. 16.) I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 58 years old, married, and has two adult children. He has a Master's in Business Administration. He holds the position of Senior Chief Engineer with a defense contractor. He is applying for a security clearance in connection with this employment.

Applicant was born in Calcutta, India in 1964. He came to the United States in 1982, and became a naturalized U.S. citizen in 2013. He married a woman from Vietnam, and she is a naturalized U.S. citizen. They have two children who were born in the U.S. Applicant began working for his current employer in 1987, and has been with the company for the past thirty-five years. He has never held a security clearance.

1.a. Applicant owns a portfolio of investments in India that he estimates to be valued at approximately 2 million dollars. (Answer to SOR.) Those foreign investments are discussed below:

1.b. Applicant co-owns an apartment in Mumbai, India, with his brother and sister. He estimates that his one-third ownership share of the apartment is worth approximately \$500,000. Applicant explained that his father originally purchased the apartment for his

mother to live in. Applicant's mother has passed away. In recent years, the apartment was used to house his aging aunt and uncle who needed care, since there were a couple of staff there who could help care for them. The house is not rented. (Tr. p. 38.) Applicant's brother also uses the apartment when he visits India, as the business they own also has an office in Mumbai. (Tr. pp. 38-39.)

1.c. Applicant is co-owner, of a large company in India that does business with the Government in India. The business is a consulting engineering company that was once owned by Applicant's father. Applicant's father passed, and Applicant and his two siblings inherited the business. The company provides independent assessments and guidance to owners and operators of steel mills in India. They also do studies for entities such as the World Bank or other organizations to establish feasibility of the projects that they are considering. This engineering company provides services related to various engineering civil projects with an expertise in the ferrous metals industry. There are also some projects in aluminum plants and other things due to the skill sets of the engineers. This business does work with the Indian Government since the steel plants are owned by the Government. (Tr. p. 33.) The company is comprised of 800 employees. The total revenue of the company last year was 11.8 million dollars. (Applicant's Post-Hearing Exhibit C.)

Applicant's brother is the Chief Executive Officer who operates and manages the company. He is domiciled in New York, and is a permanent resident of the U.S. Applicant is a Director of the company. He is involved in the company Board meetings about three times a year, and handles other miscellaneous matters.

Applicant also maintains about six foreign bank accounts in India, valued at a total of \$247,000. (Applicant's Post-Hearing Exhibit A.) Applicant has implied that there was more money than this at some point as some of the money was repatriated to the U.S., and is part of the holdings he has in the U.S. Applicant holds a significant amount of stock in this company, namely 13,334 of a total 80,000 shares issued, which is about 16.7 percent of the stock. The monetary amount of this stock is unknown. (Applicant's Post-Hearing Exhibit B.)

Applicant has about 24 million dollars in assets in the U.S., that include an investment account, two real properties, he and his wife's retirement savings accounts and his life insurance policy. (Applicant's Post-Hearing Exhibit D.)

I have taken administrative notice of the information set forth in the Government's briefs and supportive documents on the country of India. (HE1.) India is a multiparty, federal, parliamentary democracy with a bicameral legislature. The U.S. Department of State has issued a Level 2 travel advisory for India, advising U.S. nationals to exercise increased caution due to crime and terrorism. Indian authorities report rape is one of the fastest growing crimes in India. Violent crime, such as sexual assault, has occurred at tourist sites and in other locations. Terrorists may attack with little or no warning, targeting tourist locations, transportation hubs, markets/shopping malls, and government facilities. India continues to experienced terrorists and insurgent activities which may affect U.S. citizens directly or indirectly. Anti-Western terrorists groups,

some on the U.S. government's list of foreign terrorist organizations, are active in India including Islamist extremist groups. 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. There are significant human rights issues in India including unlawful and arbitrary killings, extrajudicial killings by the government or its agents; torture and cases of cruel, inhuman, or degrading treatment or punishment by police and prison officials; harsh and life-threatening prison conditions; arbitrary arrest and detention by government authorities; political prisoners, or detainees; arbitrary or unlawful interference with privacy; restrictions on free expression and media, including violence, threats of violence or unjustified arrests or prosecution against journalists; use of criminal libel laws to prosecute social media speech; restrictions on internet freedom; overly restrictive laws on the organization, funding, or operations of nongovernment organizations and civil society organizations; serious government corruption; government harassment of domestic and international human rights organizations; lack of investigation of and accountability for gender-based violence; crimes involving violence and discrimination targeting members of minority groups based on religious affiliation, social status or sexual orientation or gender identity; and forced and compulsory labor, including child labor and bonded labor. India presents a significant and heightened security risk to the United States.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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 Executive Order (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 relating to the guideline 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. Two are potentially applicable in this case:

(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 has significant financial interests in India. He, along with his two siblings, are owners of a large foreign consulting engineering company in India that does business with the Indian Government. This business is not only lucrative, but there is an emotional tie to the business since he inherited it from his father who once owned it. He also maintains six foreign bank accounts, and is co-owner of an apartment in India. Based upon the evidence presented, his financial interests in India raise serious security concerns and pose a heightened risk of foreign exploitation, inducement, manipulations, pressure, or coercion. Given the volatile situation that exists in India, and the nature of the job Applicant has, there could easily be a conflict of interest between Applicant's obligation to protect classified or sensitive information and his desire to protect his foreign company and his inheritance in India. Under the particular circumstances here, the risk-benefit analysis is applicable. These foreign financial interests pose a significant security risk to the U.S. Government. Applicant is subjected to a heightened risk of foreign influence, or exploitation, or personal conflict of interest from these foreign business and financial interests.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

None of the mitigating conditions apply. Applicant's foreign business and financial interests in India poses a significant security risk. There is great potential for a conflict of interest. Although Applicant has significant assets in the U.S., some of these assets he was able to obtain with money he received from his foreign business and financial interests in India. In addition, his ownership in a foreign consulting engineering company that does business with the Indian government could result in divided allegiance, or could be used to influence, manipulate, or pressure the Applicant. Not to mention the many foreign contacts he must have and maintain to effectively perform his duties and responsibilities as Director of the company. Insufficient mitigation under AG ¶ 8 has been established. His foreign business, foreign financial interests, and foreign contacts pose a heightened security risk particularly relevant to this proceeding.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Applicant's substantial business and financial interests in India pose a significant security risk to the U.S. Government that has not been mitigated under the particular facts presented in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge