



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-01026
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant’s bonds to the United States are insufficient to mitigate the security concerns raised by the foreign influence guideline. Eligibility for security clearance access is denied.

Statement of the Case

On September 21, 2021, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. On November 3, December 1, and December 10, 2021 (by telephone or video teleconference), and January 9, 2022 (by telephone), he provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). Following a review of Applicant’s security clearance eligibility, the Department of Defense Consolidated Adjudication Services (DOD CAS) could not make the affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated November 9, 2022, 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 December 10, 2022. He elected to have his case decided on an administrative (written) record in lieu of a hearing. Department Counsel for the Government sent Applicant a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, on February 28, 2023. He received the FORM on March 17, 2023. The Government advised Applicant that in his response, he could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. On March 21, 2023, Department Counsel indicated that she had no objection to Applicant's response to the FORM. The FORM, consisting of the Government's six items of evidence, and Applicant's December 2022 answer to the SOR and his March 2023 evidentiary response to the FORM, 16 pages in length, are admitted into evidence as Items 1 through 6. The case was assigned to me on June 1, 2023.

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.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations of the SOR. He noted that SOR ¶¶ 1.e and 1.f refer to the same real properties, 65 to 70% of the property is inherited and the remainder are rental investments he made from his savings in the United States (U.S.) and India. In his December 2022 answer, he estimated the total value of the property was \$1,150,000. Regarding SOR ¶ 1.g, Applicant admitted that he and his wife completed financial transactions of about \$107,672 in 2020 to pay building contractors and material suppliers to construct an apartment building. He conducted about \$160,000 in financial transactions in November 2017 and 2018 to purchase an Indian industrial shed. In 2012, 2013, and 2014, Applicant and his wife maintained a similar value in bank bonds to earn interest income. He transferred the bond value of \$55,000 to the U.S. in 2021. As Applicant explained, the purpose of the Indian bank accounts is to manage his and his wife's income from India and to handle their property and financial transactions. (December 2022 answer to SOR at 1) No additional information was provided.

Applicant, 49 years old, was born in India in 1974. He received an associate's degree in 1992 and a master's degree in 1995, before immigrating to the United States (U.S.) in July 1996. He received a master's degree in civil engineering at an American university in March 1998. In June 2000, he met his Indian wife in India, and they married

in December 2000. She is a naturalized U.S. citizen and has a master's degree. She currently works as a medical technician at a children's hospital. (Item 4 at 21; Item 5 at 8; December 2022 response to SOR at 2) They have no children. Applicant was naturalized as a U.S. citizen in November 2009. (Item 4 at 9; Item 5 at 4) He collected additional continuing education credits in 2015 and 2016 in aircraft composite design. He is applying for his first security clearance. Though there are references to his employment before 2010 in his November 2021 PSI, he did not list this employment (including pre-2010 employment with his current employer) in his September 2021 e-QIP. (Item 4 at 8-15, 16-18, 22, 81; Item 5 at 8; December 2022 answer to SOR at 4)

According to Applicant's September 2021 e-QIP, since May 2015, he has been employed as a structural analysis engineer with a defense contractor. From October 2010 to April 2015, Applicant was unemployed, financing his personal needs from "his income in the U.S." and rental income from foreign properties and earnings from fixed deposits and bonds. He spent a portion of the above period in India and a portion in the U.S. (Item 5 at 6-7) Some evidence indicating that Applicant was employed in the U.S. before 2015 is a September 2010 checking account statement from his current employer's credit union showing that he paid approximately \$65,000 in September 2010, to close a sale of his home at a loss during the real estate recession, rather than trying to sell his home by short-sale. (December 2022 answer to SOR, at 4; March 2023 response to FORM, at 12) The other undocumented evidence contains references of an employment record and items of employment-related recognition in his answer to the SOR when he was describing his favorable credit history and employment record with a large automobile company and his current employer. The other undocumented references to his current employer appear during his discussions of financial transactions he made between 2012 and 2020. (Item 5 at 12-20)

SOR ¶ 1.a – Applicant's mother, brother, sister, mother-in-law, and father-in-law are citizens and residents of India.

According to Applicant's September 2021 e-QIP, his mother is 72 years old and has always been a housewife who has never worked outside the home. He gave his mother \$20,000 in 2018 (SOR ¶ 1.c) for medical expenses, with the remainder to be spent in a manner that she desired. (December 2022 answer to SOR) Even though he claimed he was not bound by affection to her, he maintains weekly contact with mother by phone and social media. Applicant's father is deceased. Applicant gave his mother-in-law \$7,000 in 2021. (SOR ¶ 1.b; Item 5 at 8, 23-24) None of Applicant's relatives have worked for a foreign government or military. (Item 4 at 23-25)

Applicant's brother is 49 years old. He is self-employed as an attorney. Applicant telephones his sibling quarterly. (Item 5 at 9; Tr. 25) He loaned his sibling \$40,000 in 2013 (SOR ¶ 1.d) to achieve financial plans, and the sibling repaid him in 2017. (Item 5 at 2) In 2014, Applicant loaned his brother and his friend \$60,000 to help him achieve financial objectives, and his brother repaid him in 2016, 2017 and 2018. (Item 5 at 18) In 2017; March 2023 response to FORM, at 5)

Applicant's sister is 53 years old. She is married and has always been a housewife. Applicant maintains quarterly contact with her through social media. (Item 4 at 25)

Applicant's mother-in-law is a 63-year-old housewife who has never been employed. He contacts her quarterly by phone and social media. In 2020, he paid \$7,000 for half of her medical treatment. (Item 4 at 28, 33; Item 5 at 23) Documentation from after the medical procedure in January 2021 showed no abnormalities. The \$7,000 transfer to his mother-in-law was for the medical treatment that occurred between August 2019 and April 2020. (March 2023 response to FORM at 3-4)

Applicant's father-in-law is 73 years old. His contact with this in-law is quarterly by phone and social media. Applicant does not know where his in-law was employed but knows that he has been retired for years. (Item 4 at 29)

SOR ¶¶ 1.e, 1.f – As Applicant indicated in his December 2022 answer to the SOR, the allegations relate to the same property, with 65 to 70% of the property inherited and the rest are rental investments made from savings in the U.S. and India by Applicant and his wife. He provided no additional information concerning the number of apartments were built and whether he earns income from the rentals. He furnished no information of the purpose of the shed. Lastly, he produced no information about what he has done with the residential and agricultural land. In his March 2023 response to the SOR, Applicant provided no additional documentation regarding SOR ¶¶ 1.e and 1.f.

SOR ¶ 1.g – For calendar year 2020, Applicant completed financial transactions totaling \$107,672. Applicant indicated in his November 2021 PSI (Item 5 at 13) that he had multiple bank accounts with Indian Bank # 1, He acknowledged that he made multiple transactions from his Bank # 1 to his employer credit union account totaling \$150,000. He gifted his mother-in-law \$7,000 for cancer surgery. (Item 5 at 13) He was unable to provide additional documentation or information concerning his financial events in 2020. In his March 2023 response to the SOR, he provided two savings account statements dated March 2023, claiming that the documentation shows that in 2018, 2019, and 2020, he paid \$107,672 in materials (tiles, crushed stone, and cement) for an apartment building. He noted that the documented payments were only a small number of many, as he had other expenses that were not listed. (March 2023 response to the FORM at 8-9) No reference was made to the \$150,000 he transferred from Bank #1 to his employer's credit union.

Applicant conducted \$21,507 in financial transactions at Bank #1 in 2012. He indicated that he could not remember the reasons for the financial activity because of the passage of time. He was unable to provide additional information or documentation explaining the reasons for the expenditures during calendar year 2012. (Item 5 at 12)

In his PSIs, Applicant was asked about his total financial transactions of \$21,116 for calendar year 2013. As with 2012, Applicant could not recall the reasons for

the financial activities and was unable to supply additional information regarding the financial events for calendar year 2013. (Item 5 at 12)

Applicant was asked in his PSIs about completing \$114,900 in financial transactions in 2014. At some time during the year, he had \$12,660 at Indian Bank #1, and made regular withdrawals for rent, groceries and other bills. Applicant was unable to furnish additional information or documentation that tracks how the remainder of the transaction total was spent. (Item 5 at 12)

Applicant was questioned in his PSIs about conducting \$255,460 in financial transactions for calendar year 2017. He transferred \$160,000 from his employer's credit union account to his Indian Bank #1 account to buy a piece of property. He could not account for the remainder of the balance (\$95,457) He was unable to provide additional information of documentation concerning the financial activity in calendar year 2018. (Item 5 at 13)

Regarding the discussions in his PSIs for calendar year 2013, Applicant executed \$21,116 in financial transactions at Indian Bank #1. Due to the passage of time, he could not provide a reason for those financial activities, and could not supply additional information or documentation concerning the 2013 transactions. (Item 5 at 12)

Total amounts of financial transactions that Applicant discussed in his PSIs for calendar years 2012 through 2018 from other Indian banks are as follows:

In 2012, Applicant completed \$118,506 in completed transactions, using multiple bank accounts with Bank #2. Though he could not recall the amounts of the transactions, he used \$9,500 for daily expenses. He could not explain how he spent, the remainder of the \$118,506-balance, and was unable to develop any additional information with Bank #2 for the 2012 calendar year. (Item 5 at 17)

In 2013, Applicant completed \$120,275 in financial transactions with Bank #2. Multiple transactions totaling about \$102,000 were made from his employer's credit union checking account. He also loaned his brother (SOR ¶ 1.d) \$40,000 and used some of the balance for daily expenses for the 2013 calendar year. (Item 5 at 17-18)

In 2014, Applicant completed \$169,044 in completed financial transactions with Indian Bank #2. He made multiple transactions from his employer's credit union totaling about \$102,000. He also loaned his brother and the brother's friend \$60,000. They repaid Applicant. He could not remember if he used any other amount from Bank #2 during calendar year 2014. He could not provide any additional information about calendar year 2014. (Item 5 at 18)

Applicant was interviewed about \$47,799 in total transactions with Bank # 2 for calendar year 2017. He did not agree with the financial transaction figure. He recalled that he did not executes any major transactions during the year with Bank #2. He could

not provide any additional information or documentation regarding his financial activity for calendar year 2017. (Item 5 at 18)

Applicant was asked in his PSIs about \$90,269 in completed financial transactions for calendar year 2018 at Indian Bank #2. He disagreed with this monetary total because he claimed that he did not conduct any major transactions from Bank #2. He could not develop any additional information or documentation of financial activities for calendar year 2018. (Item 5 at 18-19)

In calendar year 2020, \$1,459 in financial transactions were conducted with a second Indian Bank #2. (Item 5 at 19) Initially, Applicant disagreed with the amount averring that he had executed no major transactions with this bank for the year. Then he stated he could not remember if he had made any transactions with Bank #2. Regarding a third Indian bank (Bank #3) with transactions totaling \$278, Applicant recalled opening a checking account and a safety deposit box to keep his personal documents and identification. Except for a \$400 deposit, he could not remember if he used Bank #3 in any other manner. He was unable to produce additional information regarding Bank #3. (Item 5 at 21)

In the PSIs, the investigator asked about Applicant's financial transactions with Indian Bank #3. The total amounts of those transactions are much smaller than the monetary totals to Banks #1 and #2. For example, the transaction amount with Bank #3 for calendar year 2012 is \$368. For calendar year 2013, the amount is \$328. The total financial transaction amount for 2018 is \$560, and the amount for 2020 is \$278. In sum, the financial amounts for Indian Bank #3 are not similar to the transaction amounts to Indian Banks #1 and #2.

Applicant and his wife earn a total of approximately \$266,975 a year in the U.S. (March 2023 response to FORM at 13) He has about \$225,000 in in his employer's credit union savings account. (March 2023 response to FORM, at 14) He has approximately \$184,877 in his employer's 401K account. He has approximately \$149,322 in five investment accounts. (March 2023 response to the FORM, at 15-16) The total financial assets of Applicant and his wife in the U.S. amount to \$826,174. During 2012 through 2014, Applicant had been earning interest income from bank bonds. After the bonds reached maturity, Applicant transferred the \$55,000 bond value to the U.S. (December 2022 response to the FORM)

Applicant does not own a home in the U.S. He provided no character statements from coworkers, supervisors, or individuals in his community.

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 country involved in economic and industrial espionage. Though India has a friendly relationship with the U.S., there is ongoing evidence that the country illegally pursues American technology. The country is among the most active in US trademark counterfeiting and copyright privacy infringement. Active anti-western terrorist groups, including Islamist extremist groups target public places frequented by Americans and other westerners. As of October 2022, the Department of State issued a Level 2 travel advisory for American citizens to be attentive to crime and terrorism in specific areas of India. The Indian states of Jammu and Kashmir continue to grapple with terrorist and insurgent incidents.

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; 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.

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.

Applicant's mother, sister, brother, mother-in-law, and father-in-law are citizens and residents of India. He gifted his mother \$20,000 in 2018 to pay for her post-surgery expenses. He provided a total of \$9,000 in 2020 and 2021 to his mother-in-law for her medical bills. He and his wife co-own real property in India, including rental apartments, a rental industrial shed, residential and agricultural land valued in at approximately \$1,150,000. He has executed financial transactions from multiple Indian bank accounts at Bank #1 and Bank #2 in calendar years 2012, 2013, 2014, 2017, 2017, 2018, and 2020, which are cited in Findings of Fact. He uses the Indian bank accounts to deposit his Indian income and manage his Indian property and financial transactions. While India is referred to as the world's largest democracy, the country continues to have human rights issues, as well as terrorist attacks at tourist locations, transportation

points, and government facilities. This creates a heightened risk of foreign pressure or coercion and a potential conflict of interest within the purview of §§ 7(a), 7(b), and 7(f).

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; 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.

Though India has a friendly bilateral relationship with the U.S., there is ongoing evidence that the country illegally pursues American technology, which engenders security concerns about Applicant's ties to his Indian mother, brother, sister, mother-in-law and father-in-law. AG § 8(a) has limited application. AG § 8(c) does not apply because his foreign contacts with his foreign family members are not casual and infrequent.

AG § 8(b) provides more mitigation than AG § 8(a) because of Applicant's residence in the U.S. since July 1996. He received his master's degree from a U.S. university in 1998, and became a naturalized U.S. citizen in November 2009. Based on his ties to the U.S., there is an indication, though limited, to believe that he can be expected to resolve a conflict of interest in favor of U.S. interests.

On the other hand, Applicant and his wife have financial assets in India of greater value than their assets on the U.S. He spent at least part of the period between 2010 and late 2014, funding his day-to-day expenses through his Indian rental properties. The record infers that he is still collecting rent from the Indian rentals at the present time. In sum, the value of Applicant's and his wife's Indian financial interests

raise a significant potential for a conflict of interest that increases his exposure to foreign influence or pressure. AG ¶ 8(f) does not apply.

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 evaluated in the context of the whole-person concept.

Applicant is 49 years old. He was awarded a master's degree in 1998. He has been married to his wife, a naturalized U.S. citizen, since 2000. He became a naturalized U.S. citizen in 2009. There is evidence that he has worked for his current employer since 2015, and evidence that he has worked for his current employer before 2010. This evidence weighs favorably in his application for a security clearance.

On the other hand, Applicant's current ties to India are more substantial. He has strong ties to his foreign family members both emotionally and financially. He and his wife control a significant amount of land and other investment property that exceeds the value of his American assets. They have multiple foreign bank accounts. Considering the evidence from an overall commonsense point of view, Applicant has not met his heavy burden of mitigating the security concerns raised by 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): | AGAINST APPLICANT |
| Subparagraphs 1.a–1.g: | 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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge