

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, who was born in India, is a naturalized U.S. citizen. He maintains contact with his parents and two close friends, all citizens of and residing in India. He mitigated the security concerns about his possession of a foreign passport after acquiring U.S. citizenship. Available information also is sufficient to mitigate the security concerns about Applicant's ties to family and friends in India. Clearance is granted.

CASENO: 06-05305.h1

DATE: 09/28/2007

DATE: September 28, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-05305
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who was born in India, is a naturalized U.S. citizen. He maintains contact with

his parents and two close friends, all citizens of and residing in India. He mitigated the security concerns about his possession of a foreign passport after acquiring U.S. citizenship. Available information also is sufficient to mitigate the security concerns about Applicant's ties to family and friends in India. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's request for a security clearance. On May 26, 2006, DOHA issued to Applicant a Statement of Reasons (SOR),¹ which specified the basis for its decision – security concerns addressed in the Directive under Guideline B (foreign influence) and Guideline C (foreign preference).² On June 12, 2006, Applicant answered the SOR, and requested a determination without a hearing. On July 17, 2006, and on January 2, 2007, he submitted additional information in response to the SOR.

On February 28, 2007, DOHA Department Counsel submitted a file of relevant materials (FORM)³ in support of the government's preliminary decision, a copy of which Applicant received on March 28, 2007. Applicant was afforded 30 days in which to file a response to the FORM, but he submitted nothing before the April 12, 2007, deadline. On August 22, 2007, he submitted information updating his employment status, and indicating he had nothing else to submit in response to the government's case. The case was assigned to me on September 10, 2007.

FINDINGS OF FACT

The government alleged that Applicant possessed a passport issued by the Republic of India on April 1, 1997, which was valid through March 31, 2007 (SOR ¶ 1.a). It also alleged that Applicant's parents are citizens of and reside in India (SOR ¶ 2.a), and that he has two friends who are citizens of and reside in India (SOR ¶ 2.b).⁴ In response, Applicant admitted each of the SOR allegations.⁵ His admissions are incorporated herein as facts. After a review of the pleadings and all of the information submitted by the parties, I make the following additional findings of fact.

Applicant is 43 years old. He was born in India and educated there through college,⁶ but studied at a university in the United States between 1992 and 1994 for his MBA, and took advanced

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² The Adjudicative Guidelines in Directive, Enclosure 2, have been superseded by the Revised Adjudicative Guidelines, which were approved by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Pending formal revision of the Directive, the Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive. However, they apply only to adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006. The SOR in this case must be adjudicated using the old guidelines.

³ The FORM included 16 documents (Items 1 - 16) proffered in support of the government's case. Because Department Counsel did not state the basis for their inclusion in the record, I can only assume that Items 8 - 16 were submitted for Official Notice. I considered the facts to which Department Counsel referred in the FORM that are based on Items 8 - 16; however, I did not limit myself to Department Counsel's proffers and considered other information in those documents that I deemed relevant to my decision.

⁴ FORM, Item 1.

⁵ FORM, Item 2.

⁶ FORM, Item 7.

engineering courses at the same university from 1998 to 1999. It is unclear from the record when he first came to the United States, but he has lived and worked here continuously since at least February 1992, when he was 27 years old.⁷ At the time he submitted his current application for clearance, he had been working for a defense contractor for five years as a senior business development manager. In May 2007, he began working for his current employer, also a defense contractor, as the director of new product and market development. In August 2002, Applicant was granted a public trust position for work on a contract with the Federal Aviation Administration.

Applicant married his wife in May 2003. She was born in India, but became a naturalized citizen in 1990. His wife's earlier marriage produced two children born and raised in the United States, but ended when her previous husband was killed in a car accident. His wife has a sister, who lives in and is a naturalized citizen of the United States, and she has extended family (her parents are deceased) still in India, with whom Applicant has no contact. Applicant intends to adopt both of his wife's children.⁸

Applicant became a naturalized U.S. citizen on April 17, 2002. His Indian citizenship ended at that time, because India does not recognize dual citizenship. He was issued a U.S. passport on April 30, 2002. In March 1997, he renewed his Indian passport, which would have expired in March 2007. However, on June 16, 2006, India cancelled Applicant's passport at his request and he has since relinquished it.⁹

Applicant is an only child. His parents are citizens of and reside in India. His mother did not work outside the home when he was growing up, and his father is now retired from an engineering career. They have never been employed by or connected to the government of India, do not receive any government pensions or national healthcare as they are financially independent. Applicant has returned to India several times to visit his parents, and, as of January 2007, was anticipating a visit to the U.S. by his parents in the next year.

Applicant has no financial interests of his own in India. He has no bank accounts, property interests, or investments there. As their only child, his parents have named him the beneficiary on their joint bank accounts. He also would be the legal heir to their estate.¹⁰

Applicant and his wife have two close friends, a married couple, with whom they keep in touch by telephone or e-mail on a regular basis, and who they see whenever they visit India. The husband is a retired stock broker, and the wife is retired from a job with the United States Agency for International Development at the U.S. Embassy in India. These friends visited him and his wife in the U.S. in 2005.¹¹

⁷ FORM, Item 5.

⁸ *Id.*

⁹ FORM, Item 3.

¹⁰ FORM, Item 7.

¹¹ FORM Items 2, 4, 7.

India and the U.S. have had close relations ever since India obtained its independence from Great Britain in 1947. The two governments continue to work closely in pursuit of mutual interests in such issues as international management of nuclear technology, preventing the proliferation of nuclear weapons, and the global war on terror. Because India is important to strategic U.S. interests in the region, the two countries have also engaged in several joint military exercises to ensure stability in southern and southwest Asia. The Indian government buys most of its nuclear technology from the U.S., and it has an excellent record when it comes to protecting its nuclear arsenal.

Since the end of the Cold War, India has been an advocate of issues important to non-aligned nations, and is a member of the South Asian Association for Regional Cooperation (SAARC). Not only does India enjoy close relations with the U.S., but it is working to strengthen its ties and advance its mutual interests with France, Israel, China, Iran, the European Union, Japan, and the Association of Southeast Asian Nations (ASEAN).¹²

India's human rights record in 2006 was often uneven. Throughout its history, India's caste system, multi-cultural and multi-ethnic population, and the vestiges of colonial domination have challenged India's ability to govern certain parts of the country. As a result of sometimes violent separatist movements, provincial law enforcement authorities and military militias have used excessive force to maintain order and defeat domestic terrorism. Terrorism and separatist activities are generally done in furtherance of internal issues, and are most violent in limited and remote geographic regions. Despite these problems, India is still an open society in which the rule of law is prominent.¹³

India, the world's most populous democracy, uses a federal form of government, similar to the United States, but with more authority vested in the central government. It has a bicameral legislature modeled after Britain's parliament, and its members are selected through open elections involving several political parties. India also has an active market-oriented economy, and conducts most of its international trade with the U.S.¹⁴ India is included, along with other countries with whom the U.S. has good relations, on the U.S. State Department's list of the most active collectors of industrial information and technology.¹⁵

¹² FORM, Items 9 and 10.

¹³ FORM, Items 11 and 13.

¹⁴ FORM, Item 9.

¹⁵ FORM, Item 15.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest¹⁶ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for an applicant to have access to classified information. The applicant must then present sufficient evidence to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government's compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.¹⁷ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.¹⁸

The Directive sets forth adjudicative guidelines¹⁹ for consideration when evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions listed under each adjudicative guideline as may be applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration²⁰ of the factors comprising the "whole person concept" and listed in E2.2.1 of the Directive.²¹ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the pleadings and the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (foreign influence) and Guideline C (foreign preference).

CONCLUSIONS

¹⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁷ See *Egan*, 484 U.S. at 528, 531.

¹⁸ See *Egan*; see also Revised Adjudicative Guidelines, ¶ 2(b).

¹⁹ Enclosure 2.

²⁰ Directive, 6.3.

²¹ "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (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."

Foreign Preference. The government alleged in SOR ¶ 1.a security concerns under Guideline C²² stemming from Applicant's possession of a passport issued by the government of India on April 1, 1997, which was valid for 10 years. Such circumstances require consideration of DC 1 and DC 3.²³ Based on the information Applicant submitted in response to the SOR on July 17, 2006, Department Counsel acknowledged the absence of information showing the passport was used after Applicant became a U.S. citizen, and that the foreign passport was cancelled and relinquished. Additionally, his foreign passport was legally void in India as soon as he acquired U.S. citizenship. Because India does not recognize dual citizenship, he ceased to be a citizen of India on April 17, 2002. Accordingly, the government asserts, and I agree, that the security concerns about Applicant's foreign passport no longer exist. I conclude Guideline C for the Applicant.

Foreign Influence. The government presented sufficient evidence to support the factual allegations in the SOR. As to SOR ¶¶ 1.a and 1.b, Applicant's parents are citizens of and reside in India. The record is silent about how often Applicant talks to his parents, but he has traveled to India several times to see them. Applicant and his wife also have close friends with whom they keep in touch on a regular basis. These facts raise security concerns under Guideline B; that is, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.²⁴ More specifically, of the disqualifying conditions (DC) listed under Guideline B, DC 1²⁵ must be considered in light of the available information about Applicant's parents and friends.

Of the mitigating conditions listed (MC) under Guideline B, MC 5²⁶ must be considered. Available information shows Applicant's interests are in the U.S., where he has lived and owned homes since the 1990s. The fact he may inherit his parents' estate and/or the contents of their bank accounts is speculative at best, because it is also possible he may predecease his parents. Also applicable to these facts is MC 1.²⁷ Despite its disjunctive wording, to apply MC 1 it must be shown

²² Directive, E2.A3.1.1. The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

²³ Directive, E2.A3.1.2.1. The exercise of dual citizenship; E2.A3.1.2.2. Possession and/or use of a foreign passport;

²⁴ Directive, E2.A2.1.1.

²⁵ Directive, E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

²⁶ Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

²⁷ Directive, E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s)

the persons in India to whom Applicant has close ties are not agents of a foreign power, and are not vulnerable to exploitation by a foreign government so that Applicant would have to choose between their well being and the interests of the United States.²⁸ As to the first prong of MC 1, none of Applicant's foreign ties works for the Indian government or is an agent thereof. They are all retired and live independently of government benefits. Indeed, one of his close friends retired from employment by a U.S. agency.

As to the second prong involving potential for coercion, available information shows that India is an open society, governed through a democratically-elected legislature and executive, checked by an independent judiciary. While there are notable problems regarding human rights abuses by India, all of the available information probative issue shows Applicant's parents and friends are not likely to be subject to the actions noted in the record. The U.S. and India enjoy close, mutually supportive political and trade relations, are working together in the global war on terror, and their interests in controlling nuclear proliferation are generally aligned. I am mindful of the information showing India is active in industrial espionage. Nonetheless, I conclude that there is little likelihood India, a nation generally friendly toward the United States, will try to leverage Applicant's relationship with his parents and friends to gain access to the information with which Applicant works. Based on the foregoing, I conclude SOR ¶¶ 1.a and 1.b for the Applicant, and further conclude available information is sufficient to mitigate the security concerns raised under Guideline B.

Whole Person. Having assessed the facts presented in this record and applied the appropriate adjudicative factors, pro and con, under Guideline B and Guideline C, I turn now to a review of the record before me in the context of the whole person factors.²⁹ Applicant is 42 years old and has lived in the United States for nearly 20 years. He is married to a naturalized U.S. citizen, and helped raise her three children, now grown, from a previous marriage. He has established his life in the U.S., but has quite naturally kept in touch with his parents and friends, none of whom has ties to the Indian government. For the same reasons that Guideline B MC 1 applies, I conclude in this context that there is little likelihood of coercion by the Indian government because, in addition to the adjudicative factors already discussed,³⁰ Applicant is fully entrenched in the U.S., has no foreign financial interests, and is unlikely to compromise his life here.

involved and the United States.

²⁸ ISCR Case No. 02-14995 at 5 (App. Bd. July 26, 2004). (Foreign Influence Mitigating Condition 1 is bifurcated in nature and cannot be applied unless there is sufficient credible record evidence that an applicant's family members, cohabitant or associates in question are (a) not agents of a foreign power, *and* (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States. (Previous citations omitted.)).

²⁹ See footnote 21, *supra*.

³⁰ Department Counsel averred in the FORM (p. 11 - 14) that the only potentially applicable "whole person" factor to be considered in cases of possible foreign preference is whether there is potential for pressure, coercion, exploitation, or duress. While the other whole person factors pertain to conduct or specific events, making them logically inapposite to most foreign influence cases, they are not "the only ones that may be considered in performing a whole person analysis in a Guideline B case...[M]any others raised by the facts of a given case can be properly factored in to a judge's evaluation of an applicant's worthiness of a security clearance." ISCR Case 04-11414 (March 5, 2007), at 4 (citations omitted).

A fair and commonsense assessment³¹ of the entire record before me shows the government's doubts about Applicant's suitability to have access to classified information are based on reliable information about his earlier possession of a foreign passport and his close ties to foreign citizens. However, available information is also sufficient to resolve those doubts. Accordingly, it is clearly consistent with the national interest to grant Applicant's request for access to classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline C (Foreign Preference): FOR THE APPLICANT
Subparagraph 1.a: For the Applicant

Paragraph 2, Guideline B, (Foreign Influence): FOR THE APPLICANT
Subparagraphs 2.a - 2.b: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone
Administrative Judge

³¹ See footnote 20, *supra*.