

KEYWORD: Foreign Influence

DIGEST: Applicant is a 33-year-old employee of a defense contractor. She and her husband were born in India and became U.S. citizens in 2003. Except for their U.S. born children, both of their families are Indian citizens and, except for his brother, live in India. Applicant submitted no mitigating evidence for consideration, and did not meet her burden to overcome foreign influence security concerns raised by her close family ties. Clearance is denied.

CASENO: 06-11963.h1

DATE: 06/21/2007

DATE: June 21, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-11963
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
DAVID M. WHITE**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old employee of a defense contractor. She and her husband were born

in India and became U.S. citizens in 2003. Except for their U.S. born children, both of their families are Indian citizens and, except for his brother, live in India. Applicant submitted no mitigating evidence for consideration, and did not meet her burden to overcome foreign influence security concerns raised by her close family ties. Clearance is denied.

STATEMENT OF THE CASE

Applicant applied for a security clearance on August 2, 2005, in conjunction with her employment by a defense contractor as a software engineer. On September 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline B (Foreign Influence), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a notarized letter dated October 23, 2006, admitting the truth of all of the allegations, and elected to have her case decided on the written record in lieu of a hearing.¹ Applicant did not submit any matters for consideration in extenuation or mitigation of her admissions. Department Counsel submitted the government's written case on March 28, 2007.

A complete copy of the file of relevant material (FORM)² was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on April 10, 2007, and returned it to DOHA. She responded further to the FORM in a letter, dated April 17, 2007, in which she provided further information concerning her financial support for her parents, the property she owns in India and her reasons for traveling there. She also pointed out that she has two children, not formerly mentioned, who are U.S. citizens by birth. She made no objection to consideration of any evidence submitted by Department Counsel who, in turn, did not object to the admissibility in evidence of Applicant's response to the FORM.

The case was assigned to another administrative judge on June 1, 2007. That judge recused herself due to a potential conflict. The case was then assigned to me, also on June 1, 2007.

FINDINGS OF FACT

¹Item 2 (Applicant's letter response to SOR dated Oct. 23, 2006).

²The government submitted six items in support of the allegations, and ten source documents in support of Department Counsel's proposed material facts concerning India.

Applicant admitted the truth of every factual allegation set forth in the SOR pertaining to foreign influence under Guideline B (subparagraphs 1.a through 1.h). Those admissions are incorporated herein as findings of fact. After complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 33-year-old employee of a defense contractor seeking to obtain a security clearance for the first time.³ She was born and raised in India. The record does not indicate when, or under what circumstances, she moved to the United States. Her husband was also born in India, and they were married there in September 1995.⁴ She attended graduate school in the U.S. from 1997 to 2000, when she was awarded a master's degree in computer science.⁵ She has worked in the U.S. from 1997 to present.⁶ She became a naturalized U.S. citizen in November 2003.⁷ Her husband became a naturalized U.S. citizen in June 2003.⁸ Applicant had an Indian passport from March 1995 until it expired in March 2005, but could not use it after becoming a U.S. citizen because India does not recognize dual citizenship.⁹ She was issued a U.S. passport in October 2004.¹⁰

Applicant reported on her security questionnaire, and admitted in response to the SOR, that her father, mother, two sisters and father-in-law are citizens of, and reside in India.¹¹ Although not alleged in the SOR due to an apparent error, she also listed her husband's brother, who is an Indian citizen residing in a different U.S. state and working as an assistant professor, on her clearance application.¹² She did not list, nor otherwise earlier disclose that she has two other brothers-in-law who are citizens and residents of India, but admitted that fact in response to the allegation in SOR ¶ 1.d that improperly described her husband's brother's status. The other two brothers-in-law are presumably her sisters' husbands. Neither Applicant nor any of her relatives have ever worked for,

³Item 3 (e-QIP security clearance questionnaire, dated Aug. 2, 2005) at 7, 12-13, 30. (Note: Item 3 has 31 pages, variously numbered as "x of 32" (top right), "x/37" (bottom right) and hand-numbered "6" through "36" (bottom right). Only the handwritten numbers cover all of the pages, so they will be used in cites. Item 3 has no pages 1 to 5.) Applicant's official age is 33, but she is really 31 years old. Her birth date was officially changed while she was a high school student to qualify her for accelerated admission to college when she was a year too young. This was done by school officials and is apparently common practice for accelerated students. Item 5 at 1.

⁴Item 3 at 7, 17.

⁵*Id.* at 11-12.

⁶*Id.* at 12-15.

⁷*Id.* at 8.

⁸*Id.* at 18.

⁹*Id.* at 24; Item 5 at 1-2.

¹⁰Item 3 at 9.

¹¹*Id.* at 22, Item 2 at 1.

¹²Item 3 at 23; Item 2 at 1; Item 6.

or had any connection with, the Indian government, military, police, intelligence or security services.¹³

Applicant provides financial support to her parents in the amount of \$1,000 every two months. Her father had a stroke in September 2006, and was a business consultant with no pension or retirement income. Her mother never worked outside the family home. She has an account, with a minimal balance, in an Indian bank for use in transferring these funds to her parents.¹⁴ Her father bought a small piece of land, worth a few thousand dollars, and gave it to Applicant as a gift. She intends to let it appreciate, then sell it and use the proceeds to support her parents.¹⁵ She has almost \$500,000 in total assets in the United States and a net worth of over \$250,000.¹⁶ Applicant traveled to India to visit her family in April 1997, April 2000, February 2002, December 2002, and December 2005.¹⁷ She has close relationships with her family members.¹⁸ She and her husband have two U.S. born children, ages 5 and 4.¹⁹

India is an ally of the United States. It is the world's largest democratic republic and is experiencing major and rapid economic expansion. India has been identified as an active collector of sensitive and proprietary industrial information. Anti-western and domestic terrorist activity in India is a continuing threat.²⁰

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs must be considered in deciding whether to grant, continue, deny or revoke an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision

¹³Item 4 at 3, 4; Item 5 at 2.

¹⁴Item 4 at 4; Applicant's Response (AR) to FORM, dated Apr.17, 2007, at 1.

¹⁵Item 4 at 5; Item 5 at 1; AR to FORM at 2.

¹⁶Item 4 at 5.

¹⁷Item 2, *supra* n. 1, at 1.

¹⁸Item 4 at 4.

¹⁹Although not listed on Item 3, she reported having these children in AR to FORM, *supra* n. 14, at 2.

²⁰Items 7-16.

of the Directive,²¹ to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making process is a conscientious scrutiny of a number of variables known as the "whole person concept." All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider, in addition to the applicable guidelines, are: (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.

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.²² 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.

In the decision-making process, facts must be established by "substantial evidence."²³ The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. "Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted."²⁴ "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 [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision."²⁵ Once it has met its initial burden of production, the burden of persuasion (including any

²¹Directive, Enclosure 2, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (December 29, 2005) ¶ 2.

²²*Id.*, at ¶¶ 2(b), 2(c).

²³"Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁴Directive ¶ E3.1.14.

²⁵Directive ¶ E3.1.15.

burden to disprove a mitigating condition) never shifts to the government.²⁶

A person who seeks access to classified information seeks to enter a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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 10865 specifically provides that any adverse industrial security clearance decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline B (Foreign Influence)

"Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism."²⁷

All of Applicant's immediate family members, except her husband and children, are citizens of and reside in India. Her mother and father are dependent on her for income, and she travels to India frequently to visit family there. These circumstances raise security concerns under foreign influence disqualifying condition (FI DC) 7(a) ("contact 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"). India is active in the collection of protected information, including from U.S. citizens,

²⁶ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

²⁷Directive, Enclosure 2 ¶ 6.

and there is heightened risk of both anti-Indian and anti-American terrorism by groups active within its borders.

FI DC 7(b) (“connections to a foreign person, group, government or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group or country by providing this information”) also applies to Applicant’s Indian connections. There need not be evidence of an actual conflict of interest to raise security concerns. The potential conflict, arising from Applicant’s numerous and close ties to Indian citizens and residents, is sufficient to shift the burden to her to disprove its existence, or otherwise mitigate the concerns.

In addition, Applicant’s father-in-law and her husband’s brother are Indian citizens, residing in India and the U.S., respectively. This raises security concerns under FI DC 7(d) (“sharing 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”), because her husband’s father and brother are subject to the same heightened risk arising under FI DC 7(a).

Her land and bank account balance in India are of very minimal value, so FI DC 7(e) (“a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation”) does not apply. Neither the land nor the bank account raise any security concerns, except as they reflect the close nature of her relationship with her parents.

Applicant has neither asserted that any foreign influence mitigating condition (FI MC) applies to her circumstances, nor is there any evidence in the record that would support the application of any FI MC. I have reviewed each potential FI MC and conclude that none apply.

Whole Person Analysis

Applicant has close relationships with her parents, her sisters’ and her husband’s families, all of whom are citizens and residents of India. She and her husband have lived and worked in the United States for more than ten years, and both renounced their Indian citizenship upon becoming naturalized U.S. citizens in 2003. Her two children are U.S. citizens by birth. All of her financial assets, except those she is giving to her parents, are located in the United States. None of her family members work for, or have any connection to the Indian government. She frequently visits her family in India. In balancing her personal attachments, the nature and extent of her U.S. and Indian family and social ties, her length of U.S. residence, the nature and intelligence gathering history of the Indian government and non-governmental groups operating there, I conclude that ongoing security concerns are established on this record.²⁸

Applicant submitted neither evidence nor other information from which any mitigating condition or circumstance might be applied to lessen the security concerns raised by the potential for conflict of interest, coercion, pressure or manipulation created by her many and strong foreign family connections. Applicant is a mature and educated individual who is accountable for her choices, and who did not alleviate security concerns in the face of her burden to do so. Given India’s

²⁸ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007); ISCR Case No. 04-02511 at 4 (App. Bd. Mar. 20, 2007); ISCR Case No. 04-11369 at 4 (App. Bd. Mar. 16, 2007); ISCR Case No. 04-11414 at 4 (App. Bd. Mar. 5, 2007).

reportedly active collection of protected information and heightened risk of anti-western and domestic terrorist activity within its borders, this burden is a heavy one and Applicant failed to meet it. For the reasons stated, I conclude Applicant has not demonstrated that it is clearly consistent with the interests of national security to grant her access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

David M. White
Administrative Judge