



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



In the matter of:)
)
) ISCR Case No. 12-04507
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: Elizabeth L. Newman, Esq.

12/19/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, Applicant's request for a security clearance is granted.

Statement of the Case

On July 2, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).¹ Applicant signed his notarized Answer to the SOR on August 29, 2012, in which he admitted all of the allegations under Guideline B. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on September 21, 2012, and the case was assigned to me on September 27, 2012. DOHA issued a Notice of Hearing on

¹ See Executive Order 10865 and DoD Directive 5220.6. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

October 17, 2012 for a hearing on October 29, 2012. Applicant waived the 15-day notice requirement. However, federal government offices were closed on the hearing date because of hurricane conditions. On November 2, 2012, a second notice was issued, re-scheduling the hearing for November 28, 2012. I convened the hearing as scheduled. Department Counsel offered two exhibits, which I admitted as Government Exhibits (GE) 1 and 2. Applicant testified and offered the testimony of two additional witnesses. He offered 10 exhibits, which I admitted as Applicant Exhibit (AE) A through J. DOHA received the transcript (Tr.) on December 7, 2012.

Procedural Ruling

I take administrative notice of facts relating to India. They are set forth in documents offered by Department Counsel, marked as Hearing Exhibit (HE) I, and Applicant, marked as HE II. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 42 years old, was born in India. He earned a bachelor's degree in science and mathematics, and a master's degree in business administration. He came to the United States in 1996, at the age of 26, and earned a master's degree in computer science in 1997. He became a U.S. citizen in August 2006. Between 2000 and 2010, he worked on defense projects for various employers. He is currently a subject matter expert for a defense contractor, where he has been employed since 2010. He held an interim security clearance from 2010 to 2012. His job involves financial management of software applications. He married an Indian citizen in 2000. She has become a U.S. citizen, and currently works for a defense contractor. Their two children, a nine-year-old daughter and a three-year-old son, are native-born U.S. citizens. Applicant, his wife, and their children, are not dual citizens of India and the United States. When Applicant became a U.S. citizen, he contacted the Indian embassy and had his Indian passport cancelled. (GE 1; AE I; Tr. 25-33, 68-69, 95-96)

Applicant's parents are citizens and residents of India. His father, 78 years old, is retired, but previously worked for an insurance company. His mother, 75 years old, has always been a homemaker. Neither has had any connection with the Indian government or military. They live in an area of India that has not experienced acts of terrorism. Applicant's parents came to the United States in 2003, when his son was born, and stayed with Applicant for about six months. Applicant has traveled to India five times in the 16 years he has lived in the United States. He speaks with them once or twice per month. They know his occupation, but are unaware that he works for the government or is applying for a security clearance. His contact with his parents has decreased in the

16 years he has been in the United States. He testified that if he were threatened with harm to his parents, he would report the threat to the Federal Bureau of Investigation. (GE1, 2; Tr. 33-37, 70-72)

Applicant is the youngest of five boys. His four brothers are citizens and residents of India and all of them live in the same town as his parents. Their occupations are bank officer, real estate agent, insurance salesman, and partner in a company that manufactures veterinary medicines. Applicant last saw his brothers during a visit to India in 2010. He talks with his oldest brother about monthly by telephone, and the other three brothers about twice per year. None of his brothers have connections with the Indian government or military. None has ever questioned him about his work. Three of his brothers are married, and his sisters-in-law are all homemakers. Applicant does not expect an inheritance from his parents. Because his brothers are all older than him, live in India, and care for his parents, they will receive any inheritance from his parents. (GE 1, 2; Tr. 36-41, 63-65, 73)

Applicant's wife's parents are citizen-residents of India. Their ages are between 65 and 70. His father-in-law runs a small farm, and his mother-in-law is a homemaker. They live in a small village about 150 miles from Applicant's parents. Applicant does not speak with them, but his wife talks with them about once per month. (GE 1, 2; Tr. 41-44)

As of the date of the SOR, Applicant owned a house in India valued at \$260,000. He purchased it as an investment in early 2006, before he became a U.S. citizen. He rented it for \$500 per month, and was losing money on it. When the real estate market crashed, he could not sell the property. Applicant provided documentation showing that in August 2012, he transferred his interest in the property to his mother-in-law. His in-laws are refurbishing it. They will use it when they travel to the city to see Applicant's father-in-law's doctors. (GE 2; AE C; Tr. 49-51, 65-66, 76-77)

Between October 2004 and July 2006, Applicant purchased four undeveloped lots in India. The real estate market was on the upswing, returns on investment were high, and Applicant could purchase the lots in India at lower cost than in the United States. He purchased them for \$8,000 to \$20,000 each. In August 2012, Applicant transferred his interest in the lots to his mother-in-law. (AE D, E, F, G; Tr. 51-53, 65-66)

Applicant's wife has three sisters who are citizen-residents of India.² Applicant testified that if his mother-in-law passed away, she would most likely distribute the properties to her daughters in India. He also stated that his wife has no intention of accepting a lot through inheritance from her mother. (Tr.65-67)

Applicant also maintained two bank accounts in India. The balance in the larger account was \$213,000, and the other was \$185. He opened the bank accounts in 2010. During his security interview in January 2012, he stated that he kept the funds there because he might build a home for retirement. However, at the hearing, Applicant stated

² Applicant's sisters-in-law through his wife are not alleged in the SOR.

he now has no intention of retiring to India. He provided documentation from each bank showing that the accounts are closed. He testified that, once he learned that the accounts were a security concern, he transferred the funds from both accounts to his U.S. bank account. Because of the exchange rate at the time of the transfer, Applicant lost almost \$30,000 by transferring the funds. (GE 2; AE A, B; Tr. 44-49, 74-78)

Applicant's salary is \$107,000 annually, and his wife's is \$83,000. He owns a home in the United States, with a market value of \$736,000, with his equity valued at \$330,000. His savings and checking accounts in U.S. banks amount to approximately \$284,000. The funds in Applicant's 401(k) account total \$206,000. He also owns personal goods valued at approximately \$257,000. Applicant's son is actively involved in school and sports. Applicant voted in the recent elections. He is involved in religious and community activities, such as raising funds for veterans and his son's school. (AE J, I; Tr. 53-62, 73-74)

Applicant's witness is a retired Air Force Chief Master Sergeant who has held a security clearance since 1976. He oversaw Applicant's work on a daily basis during implementation of a defense department finance project. He described Applicant as trustworthy, dependable, and an outstanding performer. (Tr. 79-86) Applicant's second witness is the president and managing principal of a defense contracting company where Applicant worked. He is a reserve Marine officer with 22 years' active service. He stated that he has worked with Applicant and knows him to be an excellent worker who is "very highly thought of." He is also a facility security officer, and in that capacity, recommends Applicant as an "absolutely trustworthy individual" who has received extensive security training. In his written character reference, the witness described Applicant as a man of honesty and integrity, and a "trustworthy individual of unquestionable ethical character and strong moral fiber." (AE H; Tr. 86-96)

Applicant submitted eight character references (AE H). A friend who has known Applicant for 16 years describes him as honest and truthful, and another notes his integrity and sincerity. Another friend who has known and worked with him more than a decade states that Applicant "always follows rules anywhere from daily traffic rules to filing taxes." Several noted Applicant's comments on the value he attaches to his chosen country of the United States. (AE H)

Administrative Notice

Republic of Indian (India)

I take administrative notice of the following facts.³ India is a sovereign, secular democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.2 billion. Since gaining

³ The facts cited derive from the summary and documents contained in Hearing Exhibit I and II.

independence in 1947, India has had a tumultuous history, and continues to experience terrorist and insurgent activities.

The Indian government generally respects the rights of its citizens, but serious problems remain. The most significant human rights problems are security force abuses including extrajudicial killings, torture, and rape. Authorities infringe on citizens' privacy rights, and widespread corruption at all levels of government continues.

India, along with other countries, has been involved in criminal espionage and cases involving violation of U.S. export controls. Cases have involved the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery.⁴ Governmental and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

Despite past differences regarding India's nuclear weapons program, and its cooperation with Iran in some policy areas, the United States recognizes India as key to its strategic interests and has sought to strengthen the relationship. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, fighting terrorism, and creating a strategically stable Asia.

India remains one of the world's most terrorism-afflicted countries. India and the United States are partners in the fight against global terrorism. A Bilateral Counterterrorism Cooperation Initiative was formally launched in July 2010. As of 2011, the number of terrorist-related deaths had decreased compared to 2010. The State Department's Anti-Terrorism Assistance program has conducted scores of training courses for more than 1,600 Indian law enforcement officials. In May 2011, a U.S.-India Homeland Security dialogue was established to foster cooperation on numerous law enforcement issues. As of November 2012, counter-terrorism cooperation with India was described by the Obama administration as a "pillar of the bilateral relationship" between the two countries. (HE I, II)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the (AG).⁵ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

⁴ Cases included in the Government's documents occurred from 2004 to 2008. (HE I)

⁵ Directive. 6.3.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to 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. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants 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.⁷ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern related to 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.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

The following disqualifying conditions under AG ¶ 7 are relevant:

- (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;
- (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 that information;
- (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; and
- (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.

Applicant has ties of affection for his parents, brothers, and parents-in-law, who are citizen-residents of India. He is in touch with them once or twice per month. He shares living quarters with his wife, who is in contact with her family in India. He has visited India five times since 1996. His parents visited him in the United States once. Such ties constitute a heightened risk of foreign influence. Disqualifying conditions AG ¶¶ 7(a), (b), and (d) apply. Although Applicant had substantial financial assets in India, he has divested himself of these assets, and ¶7(e) does not apply.

The foreign influence guideline also includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

- (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; and
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Here, Applicant's parents, brother, and parents-in-law live in India. The nature of the foreign country must be considered in evaluating the likelihood of exploitation. The United States and India have a long-standing, stable relationship, and share common strategic goals. India is a democracy and a partner in combating terrorism. Given the nature of the country involved, it is unlikely that the government would exploit Applicant or his relatives based on their relationship. It is unlikely that Applicant would have to choose between the interests of his family in India and the interests of the United States. AG ¶ 8(a) applies.

Applicant has strong ties to the United States, which weigh in his favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. He has lived in the United States since 1996. He and his wife are naturalized U.S. citizens, and his children are native-born U.S. citizens. He speaks with his parents and brothers once or twice per month. None of his family members has connections with the Indian government or military. His relationships with his Indian family have decreased during the 16 years he has been in the United States. Applicant has shown that he places U.S. interests above those in India: He has transferred his real estate to his mother-in-law. He also closed his bank accounts, even though that resulted in the loss of almost \$30,000. Applicant has substantial financial assets in the United States, including bank accounts, a retirement account, and a home. He votes, is involved in community activities, and is involved in his son's school activities. I conclude that Applicant would choose his strong U.S. ties over his foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's foreign contacts represented a security concern because of the potential for conflicts of interest and exploitation. However, Applicant's parents, brothers, and in-laws have no connections with the Indian government or military. Although some areas of the country are plagued by terrorists, Applicant's family does not live near such areas. Moreover, the Indian government is engaged in vigorous efforts against these groups. Applicant's interactions with his parents and brothers have decreased over the years since he has left India. Although Applicant had significant land holdings in India, he has divested himself of these properties. He also closed his bank accounts there, despite losing almost \$30,000 in the process. Applicant's actions demonstrate that he is willing to place the interests of the United States above his ties to India.

Applicant's ties to India are outweighed by his strong ties to the United States, including his wife, son, and daughter who live here, his personal investment in his children's activities and his community, and his substantial financial assets in the United States. Applicant's history, conduct, and strong U.S. ties show that he is unlikely to make decisions that would harm the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a – 1.j	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge