



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



In the matter of:)
)
 REDACTED) ISCR Case No. 12-04926
)
 Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Deputy Chief Department Counsel
For Applicant: Mark S. Zaid, Esq.

04/19/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the concerns arising from his connections to India. He has continuously resided in the United States for over 15 years, and became a U.S. citizen in 2004. He completed his doctorate degree, started a family, and worked his entire adult life in the United States. He has close friends, family, and other substantial ties to the United States. Applicant established that he will resolve any potential conflict of interest arising from his ties to India in favor of the United States. Clearance is granted.

Statement of the Case

On October 24, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline L (Outside Activities). Applicant timely answered the SOR and requested a hearing (Answer). Department Counsel indicated the Government was ready to proceed with a hearing on February 4, 2013. I was assigned Applicant's case on February 11, 2013 and, after coordinating with the parties, scheduled the hearing for March 21, 2013.

At hearing, Department Counsel withdrew the Guideline C and L allegations based on evidence that Applicant's counsel provided outside the record, which mitigated the security concerns associated with said allegations. Based on said withdrawal, the Guideline C and L allegations will not be further discussed. Department Counsel then proceeded to offer Government Exhibits (Gx.) 1 and 2 in support of the Government's case for disqualification under Guideline B. Both exhibits were admitted into evidence without objection. Department Counsel also submitted Hearing Exhibit (Hx.) I, a proposed summary of facts regarding India. The official, unclassified source documents Department Counsel relied on in preparing HE I were marked as exhibits for administrative notice (An.) I – XIV, and I have considered them in assessing the security concerns at issue. Applicant appeared at the hearing with counsel, called three witnesses, and testified. He also offered Applicant's Exhibits (Ax.) A – B and D – J, which were admitted into evidence without objection. (Ax. C was withdrawn by Applicant's counsel and not offered.) DOHA received the hearing transcript (Tr.) on March 28, 2013.

Findings of Fact

Applicant is 43 years old and was born in India. He came to the United States in 1995 to pursue his doctorate degree. While going to school, Applicant met his future wife, who was born and raised in the United States. They married in 1999. Applicant earned his PhD in 2002, receiving high honors for his dissertation. Applicant did not return to India after receiving his PhD, and decided to settle in the United States. He and his wife have one child, who was born in the United States and is now 10 years old. Applicant became a U.S. citizen in 2004 and lost his Indian citizenship upon taking the U.S. oath of allegiance. Since becoming a U.S. citizen, he has only used his U.S. passport on his foreign travel, including to India. He has not applied for and does not intend to apply for an Overseas Citizens of India (OCI) card.¹

Applicant has principally worked in U.S. academia since attaining his PhD in 2002. During his summer breaks from 2004 through 2006, he worked as a research fellow for the U.S. military and another U.S. Government agency. He authored or co-authored several publications as a result of his work for the U.S. Government, and prior to publication made certain to submit his papers for review by the proper U.S. authorities.² A former research assistant writes that Applicant "made me understand why it was so important from a preventive security standpoint to have the papers screened through the pre-publication review process."³ Applicant's current site manager, who is a retired U.S. military officer and has held a security clearance for 30 years, writes that Applicant "appears to be cognizant about security issues and

¹ Tr. at 40-42, 56-58, 63-69; Gx. 1 - 2; Ax. A; An. XIII at 11 (An OCI card is similar to a U.S. green card, and allows its holder unlimited travel to India and other benefits short of Indian citizenship).

² Tr. at 63-64, 90-94; Gx. 1 - 2; Ax. A.

³ Ax. G.

scrupulous about getting work cleared through the screening process at [X installation].”⁴

In late 2010, Applicant was not offered tenure at the prestigious U.S. school he had been teaching at since 2005 and decided to look for other employment. After a year-long job search, Applicant secured employment with a research lab that does work for the U.S. military. He has been working as a research scientist for the U.S. military since 2012, and recently received a favorable job evaluation recommending his continued employment.⁵ A fellow research scientist, who has been employed by the U.S. military for over 15 years and has co-authored numerous publications with Applicant, writes that the publications they co-authored have directly contributed to the efforts of the U.S. military.⁶ Several co-workers, supervisors, and the facility security manager, who are aware of Applicant’s connections to India and have worked with him over the past year, strongly recommend him for a security clearance.⁷ Applicant’s former co-worker and friend, who has known Applicant for over eight years, testified that after Applicant decided to leave his old teaching post he only wanted jobs located in the United States, because “this is where he wanted to raise his family.”⁸ He also vouched for Applicant’s competence, trustworthiness, and reliability.⁹

Applicant’s wife is a doctor and owns her own medical practice in the United States. Her practice generates between \$125,000 and \$150,000 in income on a yearly basis. She described Applicant as a genuine person, who votes in every election, is law abiding, and does all the right things. She testified that Applicant is deeply immersed and fully assimilated in U.S. culture and society. She described their household as a typical mid-western American household. Their daughter goes to school in the United States and is involved in the Girl Scouts.¹⁰ Their neighbor testified that she has had frequent interaction with Applicant over the past six years, as their daughters have been best friends since their time in daycare. She opined that based on her interaction with Applicant, he is a trustworthy, good person, who is loyal to the United States.¹¹

⁴ Ax. J. See also Ax. I (senior research scientist, who is a retired U.S. military officer and held a clearance for over 35 years, writes that Applicant “always followed the proper procedures for submitting manuscripts for review for public clearance.”)

⁵ Ax. B.

⁶ Ax. H.

⁷ Ax. D – F, H – J.

⁸ Tr. at 37.

⁹ Tr. at 31-37.

¹⁰ Ax. D – F, H – J.

¹¹ Tr. at 52-55.

Applicant's parents and his sister are citizens and residents of India. His father was a teacher, while his mother never worked outside the home. His father is now retired and they support themselves from his pension. Applicant has provided some financial support over the years to his parents, primarily when his mother needed an operation a few years ago and to cover the cost of their past travel to the United States. His sister and her husband are teachers. Applicant speaks with his parents and sister on a somewhat frequent basis, and has visited them when he has traveled to India in the past. None of Applicant's family members in India have any connection to the Indian government or military. Applicant and his wife testified about the rift between Applicant and his family in India due to his decision to marry an American and to raise their child as an American. Applicant's parents did not come to his wedding. Due to this familial rift and to protect his young daughter from undue familial pressure to conform to Indian customs, speech, and clothing, he has not traveled to India since 2008 and does not plan to travel back to India until his daughter is older.¹² (SOR ¶¶ 1.a – 1.b)

Applicant's cousin, who is originally from India and is a U.S. citizen, was listed in the SOR as a potential foreign influence concern. Applicant has not seen his cousin in about 20 years and only reconnected with him in 2011 via Facebook. Applicant has not communicated with his cousin since deleting his Facebook account and does not have his cousin's contact information.¹³ (SOR 1.c)

Applicant was offered a teaching position at a university in India, but turned it down.¹⁴ He voluntarily disclosed his foreign family members, offer of employment from a university in India, and other inconsequential ties to India on his application for a security clearance. He also fully discussed these foreign connections during the ensuing background interview.¹⁵ His family in India is not aware of the work he does for the U.S. Government or that he is being considered for a security clearance.¹⁶

Applicant and his wife purchased their home in the United States in 2005. Aside from the value of his wife's medical practice, Applicant estimated that their net worth in the United States is approximately \$300,000 to \$350,000. He does not have any investments or property in India or any foreign country.¹⁷

¹² Tr. at 44-52, 58-60, 67-71, 74-79, 81-87.

¹³ Tr. at 72-74.

¹⁴ Tr. at 72-74. *See also*, Ax. E (security manager writes that Applicant informed him of this potential job offer and that it was "common for academics to teach at foreign universities for a year or two, so I saw nothing unusual . . .")

¹⁵ Gx. 1 – 2; Tr. at 83-84.

¹⁶ Tr. at 79-81.

¹⁷ Tr. at 81-84; Gx. 1.

Concerning Applicant's country of birth,¹⁸ India is a multiparty, federal, parliamentary democracy with a population of approximately 1.2 billion. Its political history, since gaining independence from Great Britain in 1947, has included several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit. Despite the growth of a large urban middle-class, India remains a largely rural and agriculture-based society, and is home to some 500-600 million people living in poverty.

U.S.-Indian relations are grounded on the two countries shared values of democracy, pluralism, and rule of law. Furthermore, the United States is one of India's largest trading and investment partners. The two countries have a common interest in the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean. Both countries also share a common interest in fighting terrorism and in creating a strategically-stable Asia. Recognizing India's key strategic position, the United States has sought to strengthen its relationship with India. The countries are collaborating in a number of areas, to include energy, climate change, trade, education, and counterterrorism.

Despite the two countries strategic alliance, differences exist. The United States remains concerned about India's nuclear weapons programs, pace of economic reforms, protection of intellectual property rights, and trade in dual-use technology. Historically, India has been one of several countries that engaged in economic intelligence collection and industrial espionage targeting the United States. Between 2004 and 2008, several individuals and companies were convicted or subjected to regulatory fines for their roles in illegal exporting or attempting to illegally export restricted technology to India.

The U.S. State Department notes a number of significant human rights problems in India, notably abuses committed by police and security forces. Another significant problem is corruption, which remains at significant levels throughout the Indian government and contributes to widespread impunity at all levels of government.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not

¹⁸ The facts about India are taken from An. I – XIV.

inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline B, Foreign Influence

The foreign influence concern is set forth at AG ¶ 6:

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.

An individual's familial ties to a foreign country can raise the foreign influence concern. However, there is no *per se* rule against applicants for a security clearance who have familial ties to a foreign country. Instead, in addressing the foreign influence concern, an administrative judge must consider the foreign government involved; the intelligence gathering history of that government; the country's human rights record; and the presence of terrorist activity in that country.¹⁹

Applicant's ties to his family members in India raise the foreign influence concern. These foreign connections, in light of the threat of terrorism in India and history of unauthorized U.S. technology transfers to India, establish the following disqualifying conditions under AG ¶ 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;²⁰ 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's foreign connections and finding of heightened risk does not end the analysis, because AG ¶ 8 lists a number of conditions that could mitigate the concern. The following mitigating conditions under AG ¶ 8 are relevant to the case at hand:

(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 U.S.; 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.

¹⁹ See ISCR Case No. 11-04980 at 4 (App. Bd. Sep. 21, 2012).

²⁰ See ISCR Case No. 09-08512 at 3 (App. Bd. Dec. 1, 2011) (judge's finding that "heightened risk" existed was sustained on appeal, because Applicant and his wife had close familial ties to India and the risk of terrorism in India).

AG ¶¶ 8(a) and 8(b) apply. Applicant has been in this country for more than 15 years, and he has been a U.S. citizen since 2004. He decided to settle and make his life in the United States. He started a family in the United States, and his entire professional career has been in the United States. Beyond his immediate family members, Applicant has several close friends in the United States. Despite the familial strain that exists with his family in India, Applicant still deeply cares for his family in India, which could be used to unduly influence him. However, Applicant's life and future are clearly in the United States. Furthermore, India is a democracy and strategic partner of the United States. Although technology has been illegally exported to India, the documents provided for administrative notice do not show that coercion was utilized. Accordingly, I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the Indian government or his family members in India and the interests of the United States. More importantly, I further find that there is no conflict of interest, because Applicant established through his deep ties to the United States that he can be expected to resolve any conflict of interest in favor of the United States.

As for Applicant's cousin, he does not raise a foreign influence concern, as he is a U.S. citizen, residing and working in the United States. Furthermore, Applicant and his cousin are quite distant.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).²¹ I incorporate my comments under Guideline B and note some additional whole-person factors. Although this is Applicant's first application for a security clearance, he has in the past followed U.S. security protocols regarding pre-publication review. His current security manager writes that Applicant is conscientious about security and continues to scrupulously honor his obligation to submit his work for pre-publication review. Security clearance adjudications entail a certain degree of predictive judgment, where an applicant's past history is the best indicator of future conduct. Applicant established that he has a history of following U.S. Government regulations for the protection of potentially sensitive information and there is no reason to doubt his ability to do so going forward.

Additionally, Applicant's personal character and integrity, which are vital matters to be considered in assessing an individual's suitability for a security clearance, are unassailable. Applicant has been candid about his foreign connections from the start of his background investigation. Furthermore, I had an opportunity to observe him and his

²¹ The non-exhaustive list of adjudicative factors 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.

wife's demeanors while they testified. I found them forthcoming with details regarding their family dynamic and wholly credible when they testified about their deep connections to the United States. These favorable whole-person factors, in conjunction with the mitigating conditions noted above, mitigate the foreign influence concerns. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	WITHDRAWN
Subparagraph 2.a:	Withdrawn
Paragraph 3, Guideline L (Outside Activities):	WITHDRAWN
Subparagraph 3.a:	Withdrawn

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge