



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-05050
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

January 25, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations (e-QIP) on May 19, 2011. On September 26, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on October 3, 2012. He answered the SOR in writing on October 8, 2012, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on November 20, 2012. The Applicant responded to the FORM on December 12, 2012. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated October 8, 2012, the Applicant admitted the factual allegations in all the Paragraphs of the SOR, with explanations.

Guideline B - Foreign Influence

1.a.~1.e. The Applicant's parents are citizens of India. (Item 4 at pages 19~20.) In his Personal Subject Interview (Item 5 at pages 5~9), the Applicant made an unsworn declaration. He declared that his mother "is a home maker," and that his father "is retired." (Item 5 at page 5.) He further declared the following:

They are both U.S. permanent residents. The[y] are in the process to become U.S. citizens. They have to live in the United States 6 months out of the year to maintain their permanent resident status. 3 months out of the year, they live with . . . [the Applicant]. He has daily in person contact with them 3 months a year. The other three months they come to the U.S., the live with . . . [the Applicant's] sister. When they are not living with . . . [the Applicant], they have phone contact every 2 weeks. (Item 5 at pages 5~6.)

The Applicant's mother-in-law is a citizen of and resident of India. (Item 4 at pages 19~20.) In his unsworn declaration he averred that "she is retired. They [he and his wife] have in person contact once every 2 years and phone contact once every 2 months." (Item 5 at page 6.)

The Applicant's two sisters-in-law are citizens of and resident of India. (Item 4 at pages 25~26.) In his unsworn declaration he averred that one sister-in-law is "a technical writer" for a computer company, and the other is "an accountant" for a "technology company." He further avers that "They [he and his wife] have in person contact once every 2 years and phone contact once every 3 months." (Item 5 at page 6.)

The Applicant avers in his unsworn declaration that he also has a cousin who is a citizen of and resident of India. (Item 5 at page 6.) He further avers that "he owns a[n] information technology [IT] business," and that "They [he and his wife] have in person contact once every 2 years and phone or email contact once every 3 months." (Item 5 at page 6.)

Finally, the Applicant admits to having contact with unspecified friends who are citizens and residents of India.

I also take administrative notice of the following facts. India is among the most active collectors of U.S. economic and proprietary information. It also continues to experience terrorist and insurgent activities that may affect U.S. citizens. Also, many of India's more than one billion citizens suffer from oftentimes serious human rights abuses. Constraints on religious freedom are another matter of concern. Finally, although the United States has sought to strengthen its relationship with India, there are

some differences between the United States and India, including differences over India's nuclear weapons program, and the pace of India's economic reforms.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as 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 access to classified information will be resolved in favor of national security." 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.

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 as to obtaining a favorable security decision.

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 and endures throughout off-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 the 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 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating 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 a foreign interest.

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s parents, some in-laws, and a cousin are citizens of India. His in-laws and cousin are also permanent residents of India. Furthermore, his cousin owns an IT business. He also has an unspecified number of friends in India that he maintains contact with. I can find no countervailing mitigating condition that is applicable here. Although the Applicant avers, in an unsworn declaration, that his parents, with whom he clearly has the most contact, are applying for citizenship; without supporting declarations or documentation, I can not find this to be the case. Without more details on his relationship with his Indian family and friends, and the fact of his cousin’s IT involvement, I must find Foreign Influence against the Applicant.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Administrative Judge should also 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.

The record shows that the Applicant has a close a continuing relationship with Indian nationals, one of whom owns an IT business.

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concern arising from his Foreign Influence.

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
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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge