



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



In the matter of:)
)
) ISCR Case No. 12-07147
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 1, 2012, the Defense of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on October 24, 2012, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 29, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 3, 2012, scheduling the hearing for January 3, 2013.

The case was reassigned to me on December 20, 2012. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on January 14, 2013.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about India. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the Findings of Fact, below.

Evidence

Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified, called four witnesses, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE E through Gq and admitted without objection. E-mail correspondence about the exhibits is marked HE II.

Motion to Amend SOR

Department Counsel moved to amend SOR 1.a by withdrawing the words "a valid Indian passport," and substituting the words "an Overseas Citizen of India (OCI) card." The motion was granted without objection by Applicant.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He is married with two children, ages 14 and 11.¹

Applicant was born in India to Indian parents. He attended college and graduate school in India, and he earned a bachelor's degree, a master's degree, and a Ph.D. He wanted to pursue further education in the United States. He came to the United States in the early 1990s, and he received a master's degree from a U.S. university. He married an Indian citizen in India. His wife completed a bachelor's degree in India, and she came to the United States a few years after Applicant. Applicant and his wife remained in the United States, and they became U.S. citizens in 2004. Their two children were born in the United States.²

Applicant's parents are citizens and residents of India. His father is about 80 years old and his mother is in her mid-70s. His father worked for a state government in

¹ Tr. at 17, 61; GE 1; AE B.

² Tr. at 16-18, 33-37, 62; Applicant's response to SOR; GE 1; AE B.

India before he retired. He receives a pension from the state government based on his employment. Applicant's mother is a retired teacher. She also receives a pension from the state government. Applicant calls his parents about once a week, and he also e-mails them.³

Applicant had four siblings, but one is deceased. Two of his siblings are U.S. citizens and residents. He also has a sister who is a citizen and resident of India. She is a retired teacher. Her husband is also retired. Applicant's sister has two adult children who live and work in the United States as permanent residents (green card holders).⁴

Applicant's mother-in-law is deceased. His father-in-law is a citizen and resident of India. He is retired and receives a pension. Applicant has several friends who are citizens and residents of India. To the best of Applicant's knowledge, none of his friends have any direct connection to the Indian government.⁵

Applicant and his wife travel to India about every two to three years. He traveled more frequently in the last several years when his sibling became ill and eventually passed away.⁶

Applicant obtained status as an Overseas Citizen of India in 2006, for convenience of travel to India. The OCI program is discussed below. Applicant's OCI card does not have an expiration date. When he realized the possession of the OCI card could be a security concern, he initiated the process of formally renouncing his OCI status. His application is currently being processed by the Indian Embassy.⁷

Applicant received a plot of land in India from his father in about 1987. He intended to build a house on the land, but he immigrated to the United States, and the property has never been developed. He estimated the value of the land at about \$10,000. Applicant has started the process of transferring the property to his parents, but he stated the "process is cumbersome and bureaucratic, and is expected to take about four (4) to six (6) months."⁸

Applicant opened a joint bank account in India with his mother in about 2004. He wanted the account to be used in case of emergency. He maintained an average of

³ Tr. at 16-18, 37; Applicant's response to SOR; GE 1; AE B.

⁴ Tr. at 44-47, 62; Applicant's response to SOR; GE 1.

⁵ Tr. at 47-53; Applicant's response to SOR; GE 1.

⁶ Tr. at 53-54; Applicant's response to SOR; GE 1.

⁷ Tr. at 15-16, 26-33, 62-64; Applicant's response to SOR; GE 1; AE A, B, E-G.

⁸ Tr. at 16, 54-56, 59; Applicant's response to SOR; GE 1; AE B, F.

about \$3,000 in the account. Applicant is awaiting forms from the bank to close the account. He anticipates that the account will be closed in April 2013.⁹

Applicant has no intention of returning to India to live. He stated that he is “a blessed and proud citizen of the United States of America and [he] swear[s] allegiance to upholding the values and laws of the United States of America.” He and his wife have about \$900,000 in U.S. assets, which includes a house valued at about \$380,000, with approximately \$300,000 in equity. He donates to his local community, and he volunteers as a coach for an elementary school’s math and science teams.¹⁰

Applicant submitted several letters and four witnesses testified to Applicant’s excellent job performance, judgment, trustworthiness, reliability, work ethic, dependability, loyalty, and honesty.¹¹

India

India is a multi-party, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. Its political history since it gained 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 in different parts of the country. 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.

India’s size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. India is a non-permanent member of the Security Council, and it seeks a permanent seat on the Security Council.

The United States and India have differences over India’s nuclear weapons programs, the pace of India’s economic reforms, and India’s bilateral strategic partnership with Iran. Nevertheless, the United States recognizes that India is important to U.S. strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law. Since 2002, the United States and India have held a series of substantive combined exercises involving all military services. The United States is India’s largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. 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. The United States and India share a common interest in fighting terrorism and in creating a strategically stable Asia. They are seeking to foster bilateral relations by

⁹ Tr. at 16, 38-39; Applicant’s response to SOR; GE 1; AE B, F.

¹⁰ Tr. at 19, 56-62; Applicant’s response to SOR; AE B-D.

¹¹ Tr. at 65-84; AE C, D.

establishing working groups to address five areas of mutual interest: (1) strategic cooperation; (2) energy and climate change; (3) education and development; (4) economics, trade, and agriculture; and (5) science and technology, health, and innovation.

In the past, India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and industrial espionage directed at the United States. The United States has long-standing economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian Government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. Abuses by police and security forces have occurred primarily in criminal investigations and efforts to suppress separatist and terrorist groups. There is no evidence that India uses torture or abuse against its citizens to extract economic intelligence.

“Overseas Citizens of India”

India does not permit its citizens to hold dual nationality. In 2006, India launched the “Overseas Citizens of India” program, which has often been mischaracterized as a dual nationality program. It does not grant Indian citizenship. If a U.S. citizen obtains an OCI card, the U.S. citizen will not become a citizen of India; the person will remain a citizen of the United States. An OCI card is similar to a U.S. “green card” in that a holder can travel to and from India indefinitely, work in India, study in India, and own property in India (except for certain agricultural and plantation properties). An OCI card holder, however, does not receive an Indian passport, cannot vote in Indian elections, and is not eligible for Indian government employment.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According

¹² HE I, Item XII; AE A.

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.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Two are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

India does not recognize dual citizenship, but a former citizen can obtain Overseas Citizens of India status. Despite the misnomer, this is not citizenship. The U.S. State Department equated it to a U.S. green card. Applicant was not an Indian citizen when he obtained his OCI status, but he was able to obtain the status because of his past Indian citizenship. No specific foreign preference disqualifying condition has been raised by Applicant's OCI status. However, the action could indicate a preference for India over the United States, and it is a privilege granted by India because Applicant used to be an Indian citizen. A general foreign preference security concern under AG ¶ 9 has been raised, even without the applicability of a specific disqualifying condition.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11, including:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Because India does not recognize dual citizenship, when Applicant became a U.S. citizen, he in essence gave up his Indian citizenship. AG ¶ 11(b) is applicable. Applicant initiated the process of formally renouncing his OCI status, and his application is being processed by the Indian Embassy. No other specific mitigating condition is applicable, but I consider Applicant's actions sufficient to mitigate any concerns raised by his obtaining an OCI card.

Guideline B, Foreign Influence

The security concern for foreign influence is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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's parents, sister, father-in-law, and several friends are citizens and residents of India. His parents and father-in-law receive pensions from a branch of the Indian government. Applicant has a bank account and a plot of land in India. India is the world's largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have human rights problems; it has been victimized by terrorist attacks; and restricted, dual-use technology has been illegally exported to India. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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.;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has been in this country for more than 20 years, and he has been a U.S. citizen since 2004. His wife became a U.S. citizen at about the same time, and their children are U.S. citizens who were born in the United States. He has two siblings who are U.S. citizens, and his sister's children are U.S. permanent residents. Applicant has a successful career. He and his wife have about \$900,000 in U.S. assets. He donates to his local community, and he volunteers his time as a coach for an elementary school's math and science teams. While he and his wife still have family in India that they care for, their life and future are in the United States. India is a democracy and strategic partner of the United States. Technology has been illegally exported to India, but the documents provided for administrative notice do not show that coercion was utilized. 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. I further find there is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Applicant is in the process of divesting himself of his Indian bank account and plot of land. I further find that the value of those foreign assets, when compared with the value of his U.S. assets, are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure him. AG ¶ 8(f) is applicable.

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 relevant circumstances. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the totality of Applicant's family ties to India. There is a strong partnership between the United States and India, and they share common strategic interests. However, Guideline B is not limited to countries hostile to the United States:

The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.¹³

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

India is a democracy that generally respects the rights of its citizens, but numerous serious problems remain. Like many countries, including the United States, it has been victimized by terrorist acts. Restricted, dual-use technology has been illegally exported to India, but there is no indication that India utilizes coercion against its citizens for espionage purposes. While Applicant's parents and father-in-law receive a pension, Applicant's position, assets, and ties to the United States make economic or some other type of non-coercive influence extremely unlikely to happen and even less likely to succeed.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence and foreign preference security concerns.

¹³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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 C:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.f:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge