



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



In the matter of:)	
)	
)	ISCR Case No. 12-08409
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2015

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on February 20, 2012. On July 16, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. DOD acted 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) implemented by the DOD on September 1, 2006.

Applicant received the SOR and timely requested a hearing before an administrative judge. The case was assigned to me on November 14, 2014. A notice of hearing was issued on November 19, 2014, scheduling the hearing for December 12, 2014. Government Exhibits (GX) 1 through 3 were admitted in evidence without

objection. Applicant testified, and requested that the record be kept open so that he could submit documentation. The record was held open until January 12, 2015. Applicant submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript (Tr.) on December 23, 2014.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about India. The request and supporting documents are attached to the record as HX I. Applicant did not object to the documents. (Tr. 13) I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in India in September 1971. In 1995, he received his undergraduate degree in India. He did not serve in the military in India. He came to the United States in November 1998 at the bequest of a contract company. He has received certifications in security matters. (AX A) Since 2003, he has worked for defense contractors, and has been with his current employer since 2010. (AX C; GX 1) He became a naturalized U.S. citizen in March 2009. (GX 1) Immediately after Applicant obtained his U.S. citizenship, he surrendered his Indian passport and renounced his Indian citizenship. This is his first application for a security clearance.

Applicant's wife also is a native of India. They were married in March 1996, and they have two children. Applicant's wife became a naturalized U.S. citizen in March 2009. She works in the home. (GX 2)

Applicant's oldest child is a naturalized U.S. citizen. His youngest was born in the United States. Applicant never applied for a special status for them, such as the Overseas Citizens of India Program or the Person of Indian Origin Program (PIO). (AX A)

Applicant's mother and father are citizens and residents of India. His mother has worked in the home during the course of her marriage. Applicant's father has a small shop. He has no ties to the military or the government of India. (Tr. 24) Applicant speaks to his mother usually once a month by phone. (Tr. 36) He contacts his father about four times a year.

Applicant has five brothers who are citizens and residents of India. None of his brothers work for the government of India. None of his brothers have any ties to the

military. They do not know the nature of Applicant's work. (Tr. 26) Applicant contacts his brothers by phone or email about five times a year. Applicant has a sister who is married and is a homemaker. (Tr. 27) Applicant talks with his sister twice a year. (GX 2) Neither his sister nor his brothers know that Applicant is seeking a security clearance.

Applicant's mother-in-law is a citizen and resident of India. His mother-in-law is about 69 years old. Applicant's mother-in-law does not depend on Applicant and his wife for financial support. His wife calls her mother about three times a year. Applicant's father-in-law is retired. (Tr. 27) Applicant speaks to his father-in-law once a year. (GX 2)

Applicant's wife has four brothers who are citizens and residents of India. None of them have any ties to the Indian government or military. (Tr. 29) Applicant's wife contacts them about four times a year. (GX 2)

Applicant has a sister-in-law who is a citizen and resident of India. She does not work. She is divorced. She sometimes tutors children in her home. She has no ties to the Indian government. (Tr. 30)

Applicant owns a condominium in India that is valued at approximately \$80,000. He bought the condo in 2001 for about \$10,000 to \$15,000. (Tr. 30) His parents live in the condo. (GX 2) He is in the process of selling the condominium so that his parents can come to the United States. He wants to sell and convert the assets to the United States.

Applicant has a bank account in India which is valued at approximately \$2,500. He also has a savings account in India that is worth about \$7,000 U.S. dollars. He used the accounts when he traveled to India. (Tr. 32)

Applicant and his wife own two homes in the United States. His net worth is approximately \$540,000. He and his wife have savings and retirement accounts in the United States. (Tr. 33) Applicant owns company stock in the amount of approximately \$20,000. (Tr. 21)

Since 2009, Applicant traveled to India about three or four times. Applicant's mother came to the United States to help care for Applicant's wife who was ill in 2008. (Tr. 34)

Applicant explained at the hearing that he plans to live the rest of his life in the United States, and raise and educate his children in the United States. He has roots in the United States both professionally and personally. His wife and children are with him in the United States. He feels blessed to be in the United States and has been a productive part of the society. He has never had any legal difficulties. He is fiscally responsible. He values integrity, honesty, and courage. He has been a good son to his parents, a good father to his children, a good husband to his wife and a good neighbor in his community. He knows that his family in India also love the United States and would not cause anything that would harm the interests of the United States. Applicant

has worked much of his adult life in the United States and has deep and long-term relationships. Since 2003, he has provided services to the defense contracting arena. Applicant was credible when he explained that in the unlikely situation that there would be pressure on him or his family, he would immediately contact his facility security officer.

Applicant is in the process of liquidating his property in India. He would like to have the assets so that he could bring his parents to the United States. (Tr. 39) He explained that the process of liquidating and selling the property is cumbersome and time consuming. He is moving as fast as he can to dispose of the property.

Applicant submitted a favorable reference letter from his superior, who has known Applicant for over ten years. He performs Applicant's annual appraisal. Applicant is diligent, and detail oriented. He is prompt and communicates clearly with management and other personnel. He is a loyal citizen and a responsible member of the community. (AX A)

Applicant's neighbor describes him as an energetic and conscientious person. She has known Applicant and his family since 2005. Applicant has served on the community board. He is valued for his honesty. (AX B)

Applicant submitted annual performance evaluations from the years 2011, 2012, and 2013. Each evaluation attests to his quality work and troubleshooting skills. He has the trust of his team members. He takes initiative and is looked to for guidance and support. (AX D-F)

Administrative Notice

India is a multiparty, 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. Starting this year, it 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 establishing working groups to address (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 longstanding 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.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about 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.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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.

Four disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by “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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “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.” AG ¶ 7(b). Third, a security concern may be raised if an applicant is “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.” AG ¶ 7(d). Fourth, AG ¶ 7 (e) may be at issue “if 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” is present.

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

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1998. He is a naturalized U.S. citizen. Applicant's wife and children reside in the United States. His children are U.S. citizens, and his wife is a U.S. citizen. Neither Applicant nor his wife and children have any special status with India.

Applicant's parents, brothers, sister, and his wife's family are citizens and residents of India. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant acknowledges that he is close to his family. Applicant has not rebutted this presumption.

After considering the totality of Applicant's family ties to India as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant speaks to his mother by phone frequently and he saw her when she visited the United States and when he visited India. He maintains contact with his brothers and sister by phone several times a year. His wife speaks to her mother, father and her family in India. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (d) are raised. Applicant owns a condominium in India and has two Indian bank accounts. I conclude that AG ¶ 7(e) is at issue.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). India engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology from the United States. Applicant's parents, brothers and a sister are citizens and residents of India. His in-laws and wife's family are citizens and residents of India. For these reasons, I conclude that AG ¶ 8(a) partially applies.

Security concerns under this guideline can be mitigated by showing "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." AG ¶ 8(b). Applicant has held employment within the defense contract community since 2003 without incident. He has worked with government contractors who provide excellent references. Applicant's financial interests in the United States outweigh his financial interests in India. He and his wife have personal assets, including two homes, in the United States worth more than \$540,000. Applicant and his wife surrendered their Indian passports and use their U.S. passports. They have not taken advantage of the convenience of an Indian PIO card. I conclude that Applicant would resolve any conflict

between the interests of the United States and his family in India in favor of the United States. Thus, I conclude that AG ¶ 8(b) is established.

As to Applicant's condominium in India, his parents live there. He is in the process of selling the property so that he can liquidate assets and bring his parents to the United States. Thus, I conclude that AG 8(f) applies.

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 the applicant's conduct and all 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.

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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a naturalized U.S. citizen who has lived in the United States since 1998. He and his wife reside in the United States with their two children who are U.S. citizens. His wife is a U.S. citizen. He was articulate, candid, sincere, and credible at the hearing. He and his wife still have cultural, family, and emotional attachments to India, but they see the United States as the future home for their family. Applicant has been successful in the defense contracting business for many years. His current employer recommends him for his professionalism and integrity.

Applicant chose to leave his home and emigrate from India in search of an education and career opportunities. He wants to provide for his family in the United States. He has worked hard in the security field and has received praise for his work ethic and accomplishments. Applicant purchased a home and has maintained excellent credit. His family intends to remain in the United States. He is an active member of his community.

India is a partner of the United States in the global war on terrorism. There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests

antithetical to the United States. Applicant returned to India on several occasions to see his family. He is in the process of selling the condominium in India. His significant financial worth in the United States outweighs his financial interests in India.

Regarding Applicant's life in the United States, he is a contented American citizen, with a stable family, social, and professional life. His life is focused here. He is admired by his peers. He and his wife intend to continue their lives in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge