



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



In the matter of:)	
)	
)	ISCR Case No. 12-10290
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On August 30, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 DOD on September 1, 2006.

Applicant answered the SOR on November 21, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 21, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 22, 2015. I convened the hearing as scheduled on February 10, 2015. The Government

offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 19, 2015.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about India. The request was included in the record as 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.

Findings of Fact

Applicant denied SOR ¶ 1.a and admitted the remaining allegations. I have incorporated her admissions into the findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 46 years old. She graduated from high school in 1987. She married in 1989 and divorced in 1992. She has no children. Applicant was born in India. Her parents immigrated to the United States in 1978, and she and her three siblings followed in 1979. The family was sponsored by her mother's sister. Her father became a naturalized citizen in 1985. She, her mother, and her siblings became naturalized citizens in 1986. None hold dual citizenship.¹

After high school, Applicant worked at a bank for a period of time until her job was eliminated. In 1998, she started her own business. She is the sole owner and only employee. Some of her clients have contracts with the federal government. In 2010, Applicant was seeking to expand her business and potentially open a training center in India. An Indian person she met in 2005, who had lived in the United States before returning to India and was a realtor, helped her purchase property. He is a citizen and resident of India. She purchased office space in India for approximately \$20,000. She used money she had saved, and the property was in her name. She opened two bank accounts in India in anticipation of doing business there. Their current balances are approximately \$100 and \$113, based on the current exchange rate.²

Applicant abandoned her idea of opening a business in India when it became too difficult being a woman in a culturally male-dominated society. She listed the property for sale about six months ago. In the meantime, she rents the property so it does not remain empty and susceptible to vandalism. It has been rented for about a year. The monthly rent is \$60. She estimated she breaks even after she pays the property taxes and maintenance costs compared to how much she receives in rent. To date, she has not had any offers to buy it. The property is worth about \$15,000. She anticipates taking

¹ Tr. 27-34, 43.

² Tr. 19-26, 32-42, 47-48, 51-52.

a loss on the property when it does sell. She transferred cash she intended to use for the business from her Indian bank accounts to her American accounts. However, she continues to maintain the two accounts in India so she can deposit the rent from the property. Once she sells the property, she intends to close the accounts. Applicant's contact with the realtor is limited to discussing the sale of the property.³

Applicant maintains contact with a friend who is a citizen and resident of India whom she met in 1995. He works in the insurance business. When she is in India, she visits him and his family. She sometimes spends the night at their home before taking the train to travel within India. They occasionally speak on the telephone. He is married with children. He and his family have visited her in the United States four or five times.⁴

Applicant traveled to India for a period of 53 days in 2010 and for 67 days in 2011 to develop her business. From December 2012 through February 2013, and September through November 2014, she returned to India as a volunteer to teach English as a second language to the children in the village where she and her parents lived before immigrating. She was not compensated. She stayed in a small apartment her parents purchased about five or six years ago.⁵

Applicant's parents are retired. She and her parents jointly own a home where they live in the United States. Its estimated value is \$400,000. There is no mortgage. She estimated her total worth to be approximately \$875,000. One of her brothers has worked for a federal agency for 25 years and has a security clearance. Her other brother is a professional, and her sister is an administrative assistant. Applicant has one family member, a paternal aunt that still resides in India. All of her immediate family members are citizens and residents of the United States. She has filed and paid her taxes on time. Applicant has never voted in India.⁶

Applicant provided character letters supporting her exemplary personal and professional conduct. She is considered intelligent, considerate, reliable, dependable, trustworthy and a team player. She testified she has lived in the United States for 30 years and has tried to be a good citizen. She has worked hard, paid her taxes, and has never been in trouble.⁷

³ Tr.22-26, 47-53, 64.

⁴ Tr. 27, 60-64.

⁵ Tr. 23-25, 43, 57-58.

⁶ Tr. 43, 46-47, 54-57, 65-66.

⁷ Tr. 66; AE B.

India⁸

India is considered one of the most active countries involved in criminal espionage and U.S. export control enforcement cases. It also has a history of being among the most active collectors of U.S. economic and proprietary information and there are specific incidents wherein India engaged in attempts to acquire export-restricted products.

The U.S. Department of Justice reports there have been numerous criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India and private companies and individuals in India. These cases involve the illegal unlicensed export to India of over 57 microwave amplifiers, products that have military application; stealing company proprietary information for use in India; and submitting false export licenses to the Commerce Department in connection with the shipment of nuclear testing equipment to an entity in India. The Department of Justice brought two separate cases against defendants charged with illegally exporting controlled products to Indian government entities involved in the development of ballistic missiles, as well as space launch vehicles and combat fighter jets. There are numerous other examples of illegal export or attempted illegal export cases involving India.

India experiences terrorist and insurgent activities that may affect U.S. citizens. Anti-Western terrorist groups, some on the U.S. Government's list of foreign terrorist organizations, are active in India, including Islamist extremist groups. India remains subject to violent terrorist attacks and continues to be one of the most persistently targeted countries by transnational and domestic terrorist groups. In 2008, terrorists coordinated acts on multiple locations in Mumbai, targeting areas frequented by Westerners and killing at least 183 people, 165 of whom were civilians, including 6 Americans. There were subsequent terrorist attacks in 2012 and 2013.

India has significant human rights problems. They include: police and security force abuses, extrajudicial killings, torture, rape, corruption at all levels of government, poor prison conditions, and arbitrary arrests and detention. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment and discrimination against women remain serious problems. Widespread impunity at all levels of government is also a serious problem.

India's relations with Iran have traditionally been positive. It has reluctantly supported some measures against Tehran, but it has been careful not to break ties, since to do so would increase India's energy dependence on the Arab Persian Gulf states. India emphatically supports Tehran's right to the peaceful use of nuclear energy. India's traditionally lenient stance on Iran has been a perennial source of friction with the United States. India has a long-standing military supply relationship with Russia and remains its largest supplier of military systems and spare parts.

⁸ HE I.

India and the United States share a number of security perspectives, including those on China and Asian balance of power calculations, terrorism, Afghanistan, maritime issue and weapons of mass destruction, even though they have differences on Pakistan and Iran.

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 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, these guidelines are applied 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 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 not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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

AG ¶ 6 expresses the security concern regarding 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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; 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.

AG ¶¶ 7(a) and 7(e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member or friend living under a foreign government or owning property in a foreign country. The totality of Applicant’s family and friends ties to a foreign country as well as each individual tie must be considered.

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.”⁹

India is a country with significant human rights issues, including violence against women. There is government corruption, and it has a history of espionage and export violations. These issues raise heightened security concerns. India also shares security perspectives on a number of issues with the United States.

Applicant’s has a business relationship with a realtor in India. At one time they may have had more contact, but now she has infrequent contact with him, except as it pertains to selling her property. I do not find this relationship rises to the level of creating a heightened risk. I find none of the above disqualifying conditions apply to this person.

Applicant has a friend who is a citizen and resident of India. She sees him and his family when she travels there, sometimes stays with them, and they have visited her in the United States several times. Her contact is more than casual and infrequent and creates a heightened security concern under AG ¶ 7(a). I find Applicant’s connection to them also creates a potential conflict of interest, and AG ¶ 7(b) applies.

Applicant has two bank accounts with a combined balance of about \$213 and real estate in India estimated to be worth about \$15,000, which creates a heightened risk of foreign influence or exploitation. AG ¶ 7(e) applies.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8, and the following are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(f) the value or routine nature of the foreign business, financial, or property interest 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 occasionally talks on the phone with her friend. She stays at his house when she is in India, and his family has visited her in the United States on numerous occasions. Her contact with him is more than casual. AG ¶ 8(c) does not apply

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 or friends 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 or friend is associated with or dependent upon the foreign government, the country is known to conduct intelligence operations against the United States, or there is terrorist activity within the country.

Applicant has lived in the United States since she was a child. She has significant assets in the United States. She owns her own business. All of her family members are citizens and residents of the United States, except a paternal aunt. Her friend is an insurance salesman. There is no evidence he has close ties to the Indian government. Although India and United States have conflicts on certain issues, and India is known to be involved in espionage and illegal exports, there is no evidence that it exploits its citizens to gain intelligence. It is unlikely Applicant's friend could raise a concern and place Applicant in a position of having to choose between him and the interests of the United States. I find AG ¶ 8(a) applies.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant has been a citizen of the United States since 1986. She owns a business in the United States and considerable assets. She lives with her parents, who are citizens of the United States. I conclude that based on deep and longstanding relationships and loyalties in the U.S., she can be expected to resolve any conflict of interest in favor of U.S. interests. I find AG ¶ 8(b) applies.

Applicant owns property in India that is worth about \$15,000. She has two bank accounts with a combined balance of about \$213 that she maintains until she sells the property. The property has been on the market for six months and is rented in order to maintain its value. She earns no income from the rent after paying maintenance fees. Her assets in India are small compared to her total financial worth in the United States. Those Indian assets are unlikely to result in a conflict and could not be used to effectively influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies.

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 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 46 years old. She has lived in the United States since 1979 and became a naturalized citizen when she was 16 years old. She attempted to start a business in India and abandoned it when it became too difficult. She is in the process of divesting one piece of real estate and two small bank accounts. Her financial worth in the United States is significant. Her Indian assets are unlikely to create a conflict of interest. She has one friend in India with whom she maintains contact. He is an insurance salesman, and does not have ties to the India government that could create a concern. Her relationship with him is more than casual and infrequent as his family has traveled to the United States and stayed with Applicant. Despite that relationship, it is easily mitigated as she has a long-standing sense of loyalty to the United States and can be expected to resolve any conflict of interest in its favor. Applicant's limited foreign contact and financial interests are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence guideline.

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: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Conclusion

In light of all of the circumstances it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge