



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



In the matter of:)	
)	
)	ISCR Case No. 14-03068
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: Nichole A. Smith, Esq.

03/31/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 responded to the SOR on September 3, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 8, 2015, scheduling the hearing for January 21, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on February 19, 2015.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel and Applicant submitted written requests that I take administrative notice of certain facts about India and Malaysia. The requests were not admitted in evidence but were included in the record as Hearing Exhibits (HE) I through IV. Neither side objected, and I have taken administrative notice of the facts contained in HE I through IV. The facts are summarized in the written requests and will not be repeated in the Findings of Fact. Reference to some of the facts contained in HE I through IV will be made in the Analysis section.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection.¹

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 2011. He is applying for a security clearance for the first time. He is married with two minor children.²

Applicant was born in India to Indian parents. He attended college in India. He came to the United States in 1997 to attend graduate school. He received a master's degree from a U.S. university in 1999. He remained in the United States, and he became a U.S. citizen in 2010. India does not permit dual citizenship. Applicant surrendered his Indian passport to the Indian Consulate in 2010.³

Applicant met his wife in Singapore. She was a citizen of Malaysia. They married in 2003. She became a U.S. citizen in 2013. Their children were born in the United States.⁴

Applicant's parents and brother are citizens and residents of India. His father is in his late 60s, and his mother is in her late 50s. His father is a teacher. His mother does not work outside the home. His brother is a doctor. Applicant's family members are not affiliated with the Indian government.⁵

¹ AE J was attached to Applicant's response to the SOR.

² Tr. at 22-26, 56; Applicant's response to SOR; GE 1, 2.

³ Tr. at 22, 61-63; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 56-57; GE 1, 2.

⁵ Tr. at 26, 29-30, 32, 64-65, 76; Applicant's response to SOR; GE 1, 2; AE J.

Applicant's mother visited him in the United States on three occasions. His father and brother have never visited the United States. Applicant talks to his parents on the telephone about once a week. He talks to his brother about once a month.⁶

Applicant's father-in-law is deceased. He was a teacher before he passed away. Applicant's mother-in-law is a citizen and resident of Malaysia. She does not work outside the home. Applicant's wife talks to her mother about once a week, but Applicant has only limited contact with her.⁷

Applicant's wife has two sisters and a brother. One sister is a citizen of Malaysia and a resident of India. To Applicant's knowledge she is not employed. A second sister-in-law and Applicant's brother-in-law are citizens and residents of Malaysia. The second sister-in-law does not work outside the home. Applicant's wife talks to her sisters on a regular basis, but Applicant has only limited contact with them. Applicant's brother-in-law works in the information technology field. Applicant's wife is estranged from her brother, and they have had no contact with him in about five years. To the best of Applicant's knowledge, none of his in-laws have any direct connection to the Malaysian government.⁸

Applicant purchased a parcel of land in India in 2013 as an investment property. He paid the equivalent of about \$12,500 for the property. He sold the property in January 2015 for about the same amount.⁹

Applicant and his wife regularly travel to India and Malaysia to visit their family. He has a bank account in India that he uses when he visits. He will place some money in the account before the visit. He currently has the equivalent of about \$200 in the account. His wife has a bank account in Malaysia for the same purpose. She has the equivalent of about \$1,000 in the account.¹⁰

Applicant and his wife own a house in the United States valued at about \$400,000, with approximately \$85,000 in equity. He has about \$151,000 in a money market account and about \$117,000 in retirement accounts. He stated that his wife and children are in the United States, and that is where his allegiance lies. He stated that he would report any attempt to use his family in India and Malaysia against him.¹¹

⁶ Tr. at 26-27, 30, 33, 64; Applicant's response to SOR; GE 2.

⁷ Tr. at 38-39, 65-66; Applicant's response to SOR; GE 1, 2.

⁸ Tr. at 34-42, 57, 67-68; Applicant's response to SOR; GE 1, 2.

⁹ Tr. at 42-47, 68; Applicant's response to SOR; GE 1, 2; AE E.

¹⁰ Tr. at 47-55, 67-68; GE 1, 2; AE F.

¹¹ Tr. at 58-61, 70-71; AE A-D.

Applicant submitted several letters attesting to his excellent job performance, honesty, dedication, trustworthiness, professionalism, integrity, and loyalty to the United States.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 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).

¹² AE G-I.

Analysis

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 and brother are citizens and residents of 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.

Applicant's mother-in-law is a citizen and resident of Malaysia. His sister-in-law is a Malaysian citizen residing in India. Malaysia is a constitutional monarchy with a prime

minister. The United States is the largest foreign investor in Malaysia. Malaysia generally respects the rights of its citizens, but there are human rights problems in some areas, and there is a threat of terrorist activity.

Applicant's relatives in India and Malaysia create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Applicant no longer owns land in India. AG ¶ 7(e) is not applicable. SOR ¶ 1.f is concluded for Applicant.

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.; 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.

I considered the totality of Applicant's family ties to India and Malaysia. 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

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

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.

Applicant has been in this country for more than 17 years, and he has been a U.S. citizen since 2010. His wife became a U.S. citizen in 2013, and their children are U.S. citizens who were born in the United States. Applicant has a successful career. He and his wife have a substantial amount of U.S. assets. While he and his wife still have family in India and Malaysia that they care for, their life and future are in the United States.

India is a democracy and a 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 United States and the interests of the Indian or the Malaysian governments. 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.

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.

I considered Applicant's favorable character evidence. He has foreign family members, but his wife and children are in the United States. His foreign connections do not create an unacceptable security risk.

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

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
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Subparagraphs 1.a-1.f:	For Applicant
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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