



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-02209
)	
Applicant for Security Clearance)	

Appearances

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

03/11/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by the presence of his family members in India. Applicant’s request for a security clearance is granted.

Statement of the Case

On August 25, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for her job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended. See also Directive, Section E3.1.1.

On August 29, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline B (Foreign Influence).² Applicant timely responded to the SOR and requested a decision without a hearing. On November 13, 2014, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on December 9, 2014, and was notified that he had 30 days to file a response to the FORM. However, he did not submit any additional information. The record closed on January 8, 2015, and the case was assigned to me on January 30, 2015.

Findings of Fact

The Government alleged that Applicant's mother (SOR 1.a), father (SOR 1.b), sister (SOR 1.c) and two brothers-in-law (SOR 1.d) are citizens of India and reside in India. Applicant admitted these allegations, and provided additional information as part of his response. In addition to his admissions, I make the following findings of fact.

Applicant is 45 years old. He was born and raised in India. In 1992, he received a bachelor of science degree in India and began working in the information technology (IT) industry there. In 1998, at age 29, he immigrated to the United States on a temporary work visa. Through employment in the United States, he obtained permanent resident alien status, and he became a naturalized U.S. citizen in September 2005. (Gx. 1; FORM, Items 4 - 6)

Applicant has worked for U.S. defense contractors in various IT positions since 1998. Most of his career has been spent working at the same DOD facility. In 2011, Applicant was granted eligibility for a position of trust (ADP II) in connection with his employment. Applicant has been with his current employer since October 2013, but a previous employer supporting the same DOD program sponsored his clearance request. (FORM, Items 4 - 6)

Applicant and his wife have been married since January 2000. She also is a native of India and a naturalized U.S. citizen. They have two children, ages 11 and 8, who were born in the United States. All of Applicant's personal, professional and financial interests are in the United States. He and his wife first bought a house in 2003. In 2005, they moved and bought another house. Applicant has lived continuously in the United States since 1998. (FORM, Items and 5)

Applicant's father is a citizen and resident of India. He is a retired employee of the education department in the Indian state where he lives. Applicant's father draws a pension from the state government. Applicant's mother is a housewife.

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case. Item 7 is an administrative notice request supported by 14 documents (Enclosures I - XIV)

Applicant has a sister and a brother. His brother lives in the United States and is a naturalized U.S. citizen. Applicant's sister is a citizen and resident of India. She is a housewife who does not work outside the home. Her husband is a citizen and resident of India working as a senior bank manager. Applicant's wife's brother is a citizen and resident of India working in an IT firm there. (FORM, Items 4 - 6)

None of Applicant's family are employed by or associated with the government of India. Applicant's parents do not use email, and he speaks with his father each week by telephone. Applicant also speaks with his sister and her husband by telephone each week. His contact with his wife's brother occurs when she calls her brother each week. Applicant has also traveled to India to see his family about seven times since 2005. Each visit lasts about one month. Applicant has not encountered any difficulties traveling to or from India on those visits, and he has not established any new lasting contacts there during his trips. (FORM, Items 4 - 6)

Based on the information⁴ presented in support of the Government's administrative notice request, I make the following findings of fact:

India and the U.S. have had close relations ever since India obtained its independence from Great Britain in 1947. The two governments continue to work closely in pursuit of mutual interests in such issues as international management of nuclear technology, preventing the proliferation of nuclear weapons, and the global war on terror. Because India is important to strategic U.S. interests in the region, the two countries have also engaged in several joint military exercises to ensure stability in southern and southwest Asia. The Indian government buys most of its nuclear technology from the U.S., and it has an excellent record when it comes to protecting its nuclear arsenal.

Since the end of the Cold War, India has been an advocate of issues important to non-aligned nations, and is a member of the South Asian Association for Regional Cooperation (SAARC). Not only does India enjoy close relations with the U.S., but it is working to strengthen its ties and advance its mutual interests with France, Israel, China, Iran, the European Union, Japan, and the Association of Southeast Asian Nations (ASEAN).

India's human rights record is uneven. Throughout its history, India's caste system, multi-cultural and multi-ethnic population, and the vestiges of colonial domination have challenged India's ability to govern certain parts of the country. As a result of sometimes violent separatist movements, provincial law enforcement authorities and military militias have used excessive force to maintain order and defeat domestic terrorism. Although terrorism and separatist activities are generally done in furtherance of internal issues, and are most violent in limited and remote geographic regions, the developing presence of international terrorist organizations is a growing

⁴ In addition to the information contained in FORM Item 7 and its supporting documents, I have, *sua sponte*, consulted other sources, such as the CIA Factbook web pages regarding India.

concern. Despite these problems, India is still an open society in which the rule of law is prominent.

India, the world's most populous democracy, uses a federal form of government, similar to the United States, but with more authority vested in the central government. It has a bicameral legislature modeled after Britain's parliament, and its members are selected through open elections involving several political parties. India also has an active market-oriented economy, and conducts most of its international trade with the U.S. India is included, along with other countries with whom the U.S. has good relations, on the U.S. State Department's list of the most active collectors of industrial information and technology.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

⁵ Directive, 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

Analysis

Foreign Influence

Applicant's parents, sister, and two brothers-in-law are citizens and residents of India. By definition, these are persons to whom Applicant is closely bound by affection. This is further manifested in Applicant's frequent phone contact with his family and by frequent travel for visits with his family. Because India is known to aggressively pursue economic and technology information from the United States, and owing to the presence of domestic terrorism there, these relationships reasonably raise security concerns about foreign influence. That concern is articulated at AG ¶ 6, as follows:

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.

More specifically, the record requires application of the following disqualifying conditions under AG ¶ 7:

- (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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

By contrast, the record also requires application of the following AG ¶ 8 mitigating conditions:

(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.

None of Applicant's family are associated with the government of India. At most, his father's pension benefits represent a government connection; however, that benefit does not derive from India's central government and does not involve any active participation or interaction with the government by his father. As such, it has little, if any, security significance.

It is reasonable to conclude that there is a heightened risk of pressure by foreign entities when a person has relatives living abroad. However, in this case that risk is greatly attenuated by the open nature of India's society, and by the long-standing close ties between the United States and India. Further, Applicant has firmly established a life in this country. His wife is a naturalized U.S. citizen, and his children are U.S. citizens by birth. Applicant's entire personal and professional life is in the United States. And while the Government is never estopped from re-evaluating a person's suitability for access to classified information, it must be taken into account that Applicant has been working in support of the U.S. military through a position of trust involving sensitive information since 2011. Eligibility for such access, presumably, was based on a positive adjudication of the same information presented in this case. The record as a whole supports a reasonable conclusion that Applicant can be relied on to resolve any conflicting interests consistent with the expectations associated with his access to classified information. I conclude the security concerns raised by the Government's information have been mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline B, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). A fair and commonsense assessment of all available information bearing on Applicant's suitability for access to classified information supports a conclusion in favor of the Applicant.

Formal Findings

Formal findings 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.d: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge