

DATE: August 27, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-10004

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's wife is a citizen of India, residing in the U.S. She is a medical doctor, and has been accepted for a residency position with a prestigious American clinic. His father, mother, sister, mother-in-law, and two sister-in-laws are citizens of and reside in India. His 78 year old father retired from the Indian Army more than 25 years ago. His 64 year old mother is a housewife, as is his sister. His mother-in-law retired from a quasi government position five years ago. One of his sisters-in-law is a teacher in a private school, the other is a self-employed medical doctor. There is no evidence that any of the Applicant's family has any connection with a foreign government or is in a position to be exploited by any government. Mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On February 13, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on March 19, 2003.

The case was received by the undersigned on May 29, 2003. A notice of hearing was issued on June 27, 2003, and the case was heard on July 10, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called witness to testify on his behalf. The transcript was received on July 21, 2003. The issues raised here are whether the Applicant's perceived foreign influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations.]

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 41 years of age, has a Ph. D. In electrical engineering, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline B - Foreign Influence

The Applicant was born in India in 1961, and came to the United States in 1985 on a student visa to attend a Ph. D. program at an American University (Transcript (TR) at page 30 line 19 to page 34 at line 8, *see also* Government Exhibit (GX) I at pages 1~2). He finished his Ph. D program in 1989, became a permanent resident in 1993, and a U.S. citizen in 2000 (*id*).

1.a.~1.e. The Applicant traveled to India three times during the period 1995 to 2000 (TR at page 47 lines 6~19). His last trip to India was to get married (*id*). The Applicant's wife is a citizen of India, but resides in the U.S. (TR at page 36 line 4 to page 39 line 11, and at page 40 line 10). She is a medical doctor, and has been accepted for a residency position with a prestigious American clinic (*id*, and Applicant's Exhibits (AppX) D and E). The father, mother, sister, mother-in-law, and two sister-in-laws are all citizens of and reside in India (GX 1 at pages 3~5). His 78 year old father retired from the Indian Army more than 25 years ago, and also retired from a non-government position in 1984 (TR at page 44 line 1 to page 45 line 10). His 64 year old mother has always been a housewife (TR at page 45 lines 10~13). His sister is also a housewife (TR at page 46 line 19 to page 47 line 3). The Applicant's mother-in-law retired from a quasi government position in 1998 (TR at page 42 line 14 to page 43 line 5). She worked for a geological survey institute (*id*). One of the Applicant's sisters-in-law is a teacher in a private school, the other is a self-employed medical doctor (TR at page 43 lines 6~18). The Applicant speaks to his family in India on a weekly basis, but never talks about his work (TR at page 43 lines 19~25, and at page 45 line 14 to page 46 line 9).

1.f. When the Applicant was a college student in India, from 1983~1985, he received a monthly stipend of \$30 from his college department (TR at page 48 line 14 to page 49 line 24, and at page 50 line 25 to page 51 line 6). In the U.S., he presently has about \$50,000 in a credit union, and \$160,000 in a retirement fund (AppX F).

### Mitigation

The Applicant's "core manager" testified most laudably on the part of the Applicant (TR at page 24 line 25 to page 29 line 13, *see also* AppX C). He has known the Applicant since 1990 (*id*). The Applicant's "Senior Manager," a retired U.S. Air Force Colonel who has known the Applicant since 1996, also attests to his trustworthiness (AppX G).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Foreign Influence

#### Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

#### Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s)

involved and the United States;

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

The Applicant's Indian wife resides in the U.S., and, as a medical doctor, has been accepted for a residency position at an American clinic. His parents, sister, mother-in-law, and two sisters-in-law are all citizens of and reside in India. The Applicant's 78 year old father has long since retired from the Indian Army. His mother and sister are both housewives. His mother-in-law is also retired from a geological survey institute. His two sister-in-laws, one a doctor and the other a doctor, both work in the private sector. His Indian family members have no connection with any government, nor is there any evidence that their presence in U.S. and India can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even countenance any such attempt at exploitation of any of his relatives.

As to the \$30 a month stipend he received from his university in India during the 1980s, this pales in comparison to his net worth in the U.S. The last disqualifying condition is therefore not applicable. Guideline B is thus found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge