

DATE: July 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06162

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq, Department Counsel

Kathryn Antigone Trowbridge, Esq, Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

SYNOPSIS

Applicant is a 47-year-old-employee of a defense contractor who is a native of India and has a small property interest in India. He has taken steps to divest his ownership in favor of a sister. He became a U.S. citizen in 1994 and has traveled several times to India, most recently in 2000, to visit his five siblings who live in a rural area and have no ties to the government. He has strong ties to the United States with business and family investments. Clearance is granted.

STATEMENT OF CASE

On January 3, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 10, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing because of illness and it was re-assigned to me on April 28, 2003. A notice of hearing was issued on May 8, 2003 and the hearing was held on May 29, 2003. The Government introduced two exhibits at the hearing. The Applicant introduced twelve exhibits. All exhibits were accepted into evidence. The Applicant and five witnesses testified on his behalf. The transcript was received on June 6, 2003.

FINDINGS OF FACT

Applicant has admitted all of the specific factual allegations in the SOR pertaining to the citizenship of his relatives and those pertaining to Applicant's citizenship. Those admissions are incorporated herein as findings of fact. Applicant denied the general allegations as to the implications and effect of the admissions on his ability to hold a security clearance

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant was born in India in 1956 and educated there. He was employed in India as a teaching assistant at his state university while obtaining a bachelors degree in engineering.

Applicant came to the United States in 1982 with a student visa to do graduate work in electrical engineering. He applied for a green card in 1987 through his employer. He went to Taiwan for the employer in 1993. (Tr. 36) He applied for U.S. citizenship and became a U.S. citizen in 1994. (Tr. 103)

Applicant's father owned ten acres of agricultural land in India which supported the family. On his death the land was divided among the sons and Applicant inherited about two acres that has a value of about \$5,000.00. He receives no financial benefit from the property and has empowered a brother with de facto ownership of it with authority to sell his interest for the benefit of a female sibling who is disabled and lives with the brother. (Tr 125-127, 135, 152-155)

Applicant had a bank account in India with only a nominal amount of funds in it that was used to help members of the family with modest contributions. (Tr. 157) Applicant has taken steps to close the account. (Tr. 138-139 and Exh. J)

Applicant's mother-in-law is a citizen of India and lives with him and his wife and family in the U.S. and is applying for citizenship. (Tr. 52, 53) She worked in a library in India and receives retirement income from that employment as well as some disability income through her late husband. (Tr. 52)

Applicant's wife became a citizen in 1995 and their two children are U.S. citizens by birth. (Tr. 76) His wife has a degree from a U.S. university and is employed as a financial analyst.(Tr. 79, 80)

Applicant has five siblings who are Indian citizens living in India. All are of modest means but well settled and none work for the government or in any defense or high tech industry.(Tr. 120-125) One brother worked for a state-run electric utility but is now retired. (Tr. 122)

Applicant went to Taiwan in 1993 after coming to the U.S. but before becoming a citizen, using his Indian passport. His trip was on behalf of his former employer and he was engaged in making a computer simulator for a nuclear power plant. None of the work was classified and he did not work on the nuclear aspects of the plant. (Tr. 112) He was in Taiwan several months but has not traveled there since the project was completed. Since becoming a U.S. citizen he has not used his Indian passport and it has now expired.(Tr. 147) He has no intention of renewing it. (Tr. 148)

Applicant has been employed by several companies in the U.S. since the Taiwan project including several where he served as a consultant to U.S. defense industries primarily on simulation and archiving. (Tr. 109-111) He joined his present engineering company in 2001. (Tr. 110)

Applicant and his wife own their own home on which they have a mortgage but have a substantial investment in it of over \$100,000.00. They also have other investments including one in a start-up company. They are committed to an economic future in the United States. Their combined annual income is \$150,000.00 a year. (Tr. 81-82) Their net worth is over \$350,000.00. (Tr. 144)

Since becoming a U.S. citizen, Applicant has traveled to India several times to visit his mother and siblings. His most recent trip was in 2000. He telephones his mother every two or three months. (160-162) He is regarded by his family as a devoted husband and father. (Tr. 82-84) His wife's family visits them in the U.S. every three or four years. (Tr. 149)

Applicant is highly regarded by his current employer and the former employer whose project he worked on in Taiwan. His colleagues consider him to be a highly competent engineer who often mentors others in his company. He is regarded

as a "model employee" by his present employer. (Tr. 43)

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 occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC): Foreign Influence-Guideline B:

A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The foreign influence alleged under Guideline B is based on Applicant's family living in India, his travels to and work in India and Taiwan, and his property interests in India.

None of his family works for the government or has any ties to it. The family is a rural family and not likely to be in any way threatened or intimidated to bring pressure on Applicant. His work in Taiwan for a former employer was to make a simulator for help in the operation of a nuclear power plant. He has had no further contact with that country since that

one trip ten years ago.

Applicant and his family are settled in the United States with good jobs and show strong ties to the country both in loyalty and economic interests.

The land ownership in India is insignificant financially and Applicant has taken necessary steps to divest himself of the minimal interest he has in it for the benefit of an infirm sister. His travels to India have been infrequent and solely for family reasons.

The security concern engendered by foreign citizenship of close family relatives may be mitigated where it can be determined that those persons are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an individual to choose between loyalty to those persons and the United States. Mitigating Condition (MC) 1 (E2.A2.1.3.1.) I find that the family concern has been mitigated.

As to the financial interest of the Applicant, (DC) 8 requires that the interest be substantial and the (MC) 5 (E2.A2.1.3.5.) provides that if it is only minimal then it is mitigated. I find that the financial concern has been mitigated because of the low value of the interest in the property and actions taken by the Applicant to divest himself of it.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant.

Charles D. Ablard

Administrative Judge