

DATE: August 27, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07335

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated foreign influence security concerns raised because his father is a citizen and resident of India and he had an interest in two of his father's bank accounts. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 24 March 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-Applicant failed to meet the foreign influence (Guideline B) personnel security guideline of the Directive. Applicant answered the SOR in writing on 10 April 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 9 June 2003. On 24 July 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. DOHA received the transcript (Tr.) of the proceeding on 1 August 2003.

FINDINGS OF FACT

Applicant is a 52-year-old operations manager for a defense contractor. Ex. 1 at 1. He was born in India and came to the U.S. in 1968 to be with his father who was doing post-doctoral research at a U.S. university. Tr. 21; Ex. 1 at 1. Applicant attended college in the U.S. and became a U.S. citizen in 1983. Tr. 22. Applicant is married to a U.S. citizen and has two daughters, 23 and 19 years old, both born, raised, and educated in the U.S. Ex. 1 at 3; Tr. 29-30. All of his siblings are U.S. citizens and reside in the U.S. Tr. 30.

Applicant's parents were Indian citizens with permanent residency status in the U.S. Applicant's father taught in Liberia for a while, but retired from work to the U.S. some 23 years ago. Tr. 26, 33. In 1989, with the permission of the Immigration and Naturalization Service, Applicant's parents returned to India for an extended visit. By the time they were to return to the U.S., Applicant's mother was too ill to travel. His parents remained in India and gave up their U.S.

residency status. Tr. 22. Applicant's mother died in India and his father has remained ever since. Applicant's father is financially independent and is cared for by his own brother. Tr. 27.

Applicant was a co-signatory on two of his father's Indian bank accounts with a combined total of about \$15,000. Because of the security concern these accounts raised, Applicant had his father remove him from the accounts. Applicant has no financial interests in India.

Applicant returned to India on at least 10 occasions since 1994. These trips have all been at the direction of his U.S. employer to oversee software development by Indian programmers. By the terms of the incorporation in India, this company was not permitted to do business with Indian customers and did not provide services to the Indian Government. Tr. 40. Neither Applicant nor his father have any dealings with the Indian Government. Tr. 27.

Although there are known problems of civil unrest in India, they are found mostly in the border and northern regions of the country. Applicant's father resides in a large southern city that does not face civil unrest. Tr. 27.

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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the SOR, DOHA alleged Applicant's father is a citizen and resident of India, with whom Applicant has regular contact and is co-signatory on two bank accounts in India (¶ 1.a.), and Applicant has business interests in India which caused him to travel there 15 times between 1994 and 2001 (¶ 1.b.). Under Guideline B, a security concern may exist when an applicant's immediate family are not citizens of the U.S. Financial interests in other countries are relevant to security determinations if they make the applicant potentially vulnerable to coercion, exploitation, or pressure. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence that a member of Applicant's immediate family is a citizen and resident of a foreign country (DC 1) and that he had a financial interest in a foreign country-his father's bank accounts (DC 8). However, Applicant established that his father is not an agent of a foreign government and is not in a position to be exploited in a way that could force Applicant to choose between loyalty to his father or to the U.S. MC1. Furthermore, Applicant established he is no longer a beneficiary of any of his father's bank accounts and has no financial interests in India. MC 5. Finding on ¶ 1.a. is for Applicant.

The Government failed to establish Applicant had any business interests in a foreign country. Applicant traveled to India for his employer not on behalf of his personal business. Finding on ¶ 1.b. is for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

DECISION

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

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.