

KEYWORD: Foreign Influence

DIGEST: While Applicant has immediate family members who are citizens of and reside in India, his father and brother no longer have any ties to the Indian Army. His brother now is a permanent resident of the U.S. They are not in a position to be exploited by India in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant has a strong interests in the United States. Further India and the U.S. have a strategic partnership. Clearance is granted.

CASENO: 02-30717.h1

DATE: 04/05/2005

DATE: April 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30717

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina Mills, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

While Applicant has immediate family members who are citizens of and reside in India, his father and brother no longer have any ties to the Indian Army. His brother now is a permanent resident of the U.S. They are not in a position to be exploited by India in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant has a strong interests in the United States. Further India and the U.S. have a strategic partnership. Clearance is granted.

### **STATEMENT OF THE CASE**

On February 20, 2004, 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 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress and that he has traveled to his native India in 1997. On March 8, 2004, Applicant responded in writing and with attachments to the SOR allegations. Applicant denies SOR 1.c., and he admits 1.a., 1.b., and 1.d. He requested a clearance decision based on a hearing record.

Department Counsel prepared a File of Relevant Material (FORM) on June 4, 2004, which was forwarded to Applicant. In the submission the Government included two documents for Administrative Notice: Items 5 and 6. Applicant received the FORM on June 14, 2004, and failed to respond by the July 14, 2004 deadline. The case was assigned to me on July 26, 2004.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 53 years old and has been a senior associate with a defense contractor from 1982 to present. He applied for a security clearance in June 2002. (Item 4)

Applicant was born in India in 1951 and became a naturalized United States citizen in 1986. He has an MBA awarded in 1975 by a university in India. He worked in India from 1975 to 1977. Applicant and his wife who is a U.S. citizen have one child who was born in the United States. He has lived at the same residence in State #1 for almost fifteen years. (Item 4)

### **Foreign Influence**

Applicant's father and mother are citizens of and reside in India. Applicant's father retired more than 25 years ago from the Indian Army where he was a Brigadier General. His brother worked for the Indian Army as a Brigadier General but has retired and no longer has an Indian government security clearance. He currently lives in the U.S. on an immigration visa and has a permanent resident card. In 1997 Applicant traveled to India to visit his parents and brothers for 21 days. Applicant has a sister who was born in India and is a citizen of India, but lives in Canada. (Item 2)

According to the U.S. Department of State Background Note on India, it is a federal republic. The U.S. has transformed its relationship with India as U.S. interests require a strong relationship as both are democracies committed to political freedom protected by representative government. They also share an interest in fighting terrorism and in creating a strategically stable Asia. The U.S. and India announced in January 2004 the Next Steps in the Strategic Partnership. (Item 5)

The Government of India generally respects the human rights of its citizens according to the U.S. Department of State Country Report on Human Rights Practices in 2003. (Item 6)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

#### **Foreign Influence (Guideline B)**

**E2.A2.1.1. The Concern:** A security risk may exist when an individual's immediate family, including cohabitants, 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 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.

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The Government established an initial security concern under Guideline B<sup>(1)</sup> (Foreign Influence) as Applicant's immediate family members are citizens of and reside in India. The Indian citizenship and residency of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. The evidence of existence of immediate family members, who are citizens of and reside in, India comes within Disqualifying Condition 1.

However, based on the nature of the overall record, including the Applicant's extended ties in the United States where he has lived for over twenty years and the close relationship of India to the United States, I have determined that his family members in India do not constitute an unacceptable security risk under itigating Conditions 1 and 3.<sup>(2)</sup>

First, his father and brother no longer have any ties to the Indian Army as both are retired, his father for 25 years. Further, his brother is now a permanent resident of the U.S. Thus, his Indian family members no longer have any connection with the Indian government, nor is there any evidence that their presence in U.S. and India can be exploited by the Indian government. Applicant does not have binding family ties in India as he has not visited his family in India since 1997, so his contact is casual and infrequent. While Applicant was born in India, he has worked for a defense contractor since 1982 and became a citizen of the United States in 1986. Thus he has strong ties to the U.S. and strong family ties in the U.S. with his wife and child here. Further India and the U.S. have a strategic partnership. As a democracy with an overall good human rights record, it is unlikely that India would pressure Applicant's elderly mother and father in such a way as to subject Applicant to exploitation.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1; I conclude that he has mitigated the allegations in SOR subparagraphs 1.a. through 1.d.

### FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

### DECISION

In light of all 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.

Kathryn Moen Braeman

Administrative Judge

1. E2.A2.1.2. **Conditions that could raise a security concern and may be disqualifying include:** E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country.

2. E2.A2.1.3. **Conditions that could mitigate security concerns include:** E2.A2.1.3.1. A determination that the immediate family member(s) . . . in question 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. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

