

DATE: August 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30977

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has several immediate family members who are citizens of and reside in India, but 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 some financial interest in India, but his strong attachment to the United States makes it unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On February 21, 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 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.

On March 27, 2003, DOHA received Applicant's signed and sworn, undated response. Applicant requested a clearance decision based on a hearing record.

On May 5, 2003, this case was assigned to another Administrative Judge, but on May 6, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 7, 2003, and the hearing was held on May 23, 2003.

At the hearing, Department Counsel offered five documentary exhibits (Exhibits 1 - 5) and no witnesses were called. Applicant offered one documentary exhibit (Exhibit A) and offered his own testimony and the testimony of one other witness. The transcript (TR) was received on June 3, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B 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, that he has some financial interest in India and that he has traveled to his native India on a number of occasions. The SOR contains nine allegations, 1.a. through 1.i., under Guideline B (Foreign Influence). In his response to the SOR, Applicant admits all nine allegations. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 50 years old. He was born in India in 1952, moved to the United States in 1983, and became a naturalized United States citizen in 1990. He has a bachelors degree in math and science, and an associates degree in computer science.

Applicant's wife was born in India, married the Applicant and came to the United States with him in 1983. She also became a naturalized United States citizen with her husband in 1990. Applicant and his wife have two children. Their daughter is a native born United States citizen, and their son, who was approximately two years old when they moved here, is also a United States citizen. (Tr at 31-34.)

Applicant's father and mother, three siblings, mother-in-law and six extended family members are citizens of and reside in India. Applicant's father is 82 years old, retired and in failing health. Applicant places telephone calls to his father approximately every ten days, in large part, because of his poor health. He also keeps a bank account of approximately \$5,000 to help his father with his medical expenses. (Tr at 23, 24.) Applicant's mother is a retired housewife. His brother works for a private company, and he is currently working and living with his immediate family in Australia. His two sisters and his mother-in-law are housewives. Of Applicant's three brothers-in-law, one lives in the United States and is a United States citizen, the second one is a farmer, and the third brother-in-law works for an agency of the Indian government in the general services department in a low level position. He is the only one of Applicant's family members who is employed in any capacity by the government of India, and Applicant has minimal contact with him. I have determined that there is no risk that Applicant could be influenced negatively by the Indian government against the interests of the United States because of his family's employment.

Applicant also keeps \$200 in an account in India simply as a convenience so that when he travels to India it will be easier to get available cash. (Tr at 24, 25.) His travels to India are made to see his family and for specific family events. He visited India in the year 1999 to attend the funeral of his father-in-law, in 2000 for his parents' fiftieth wedding anniversary and in 2002 to see his ailing father. (Tr at 45-47.)

Applicant does have some additional financial interests in India. He provided approximately \$20,000 to \$25,000 to build a home for his parents. Applicant estimates that the house is now worth about \$30,000. Applicant does not know who legally owns the house but he considers it to belong to his parents. His wife also has a part interest in the farm of her brother in India, which Applicant estimates to be worth approximately \$6,000 to \$8,000. (Tr at 55-57.) It is not clear how much, if any, of this may eventually be of value to Applicant. However, even if Applicant stood to inherit all of the monetary value from these properties, I conclude that when considering Applicant's family and their history in the United States, and his extremely strong testimony about his feelings concerning the United States, this financial interest is not significant enough to cause Applicant to do anything which would be contrary to the interests of the United States.

In addition to Applicant, one witness testified on behalf of Applicant. The witness is the Assistant Security Facility Security Officer of the company by which Applicant is employed. The witness testified that the company regarded him very highly as a skilled consultant. (Tr at 62-65.)

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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

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;

E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

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.A2.1.3.1. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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."

CONCLUSIONSBased on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence) . Applicant's immediate family members are citizens of and reside in the 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 (DC) 1. However, based on the nature of the overall record, including: the lack of government involvement of Applicant's family members, Applicant's family history since coming to the United States, his extremely strong testimony about his feelings concerning the United States 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 and Mitigating Conditions (MC) 1 applies.

Applicant also has some financial interest in India which is a concern under DC 8. However, MC 5 applies, even if Applicant stood to gain all of the monetary value from property and money in India. The financial interests are not significant enough to cause Applicant to do anything which would be contrary to the interests of the United States.

After considering all of the evidence of record on these issues, I conclude that, even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

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

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: 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.

Martin H. Mogul
Administrative Judge