

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Born in India, Applicant became a naturalized U.S. citizen in April 2001 and in October 2003 voluntarily complied with the Department of Defense policy requirements to return her Indian passport and thus mitigated foreign preference concerns. Her husband, children, mother and siblings live and are naturalized citizens of the United States (U.S.); only her aunts, uncles and cousins remain in India. However, none of her relatives have any ties to the government and would not place her in a position of vulnerability. Her retirement benefits from her job in India are minimal. Applicant has mitigated concerns over foreign influence. Clearance is granted.

CASENO: 02-32008.h1

DATE: 08/05/2004

DATE: August 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32008

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Born in India, Applicant became a naturalized U.S. citizen in April 2001 and in October 2003 voluntarily complied with the Department of Defense policy requirements to return her Indian passport and thus mitigated foreign preference concerns. Her husband, children, mother, and siblings live and are naturalized citizens of the United States (U.S.). While her aunts, uncles and cousins remain in India, none of her relatives have any ties to the government and would not place her in a position of vulnerability. Her retirement benefits from her job in India are minimal. Applicant has mitigated concerns over foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant,⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 16, 2003. The SOR detailed security concerns in paragraph 1 over foreign influence (Guideline B) and in paragraph 2 over foreign preference (Guideline C). Applicant received the SOR and replied to these SOR allegations in an Answer notarized on October 9, 2003, and requested a decision be made without a hearing⁽²⁾.

The case was assigned to Department Counsel to prepare evidence to submit for a decision on the administrative record. On December 29, 2003 he prepared a File of Relevant Material (FORM) for the Applicant's review and advised Applicant that she had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that she had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on December 30, 2003, and again notified the Applicant that she had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on January 27, 2004, and responded on January 31, 2004, before the deadline. Applicant made no objection to any of the documents that Department Counsel submitted for Official Notice: Items 6-13.

On February 10, 2004, Department Counsel indicated he had no objection to Applicant's response to the FORM, which I admitted into evidence as Exhibit A. On February 13, 2004, the case was assigned to me.

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, who is 53 years old, has worked for Company #1 from July 2000 to present in State #1. In July 2002 she completed an Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (Item 1)

Applicant attended college in India and received her BA in 1970. She married in June 1973 and has two children born in 1974 and 1980. (Item 1)

Foreign Preference and Foreign Influence

Applicant worked at a bank in India for 22 years, and her husband was a civil engineer. Applicant's parents and siblings came to the U.S. in 1975. Her sister became a naturalized U.S. citizen in May 1974. Her brother became a naturalized U.S. citizen in April 1982. Her mother became a naturalized U.S. citizen in January 1997. In August 1994 Applicant's sister sponsored Applicant and her family to come to the U.S. (Items 1, 2)

Born in India, Applicant became a naturalized U.S. citizen in April 2001. (Items 1, 2, 3)

In October 2003 she surrendered a passport from India, issued in April 1996 due to expire in April 2006. Since moving to the U.S., Applicant traveled ⁽³⁾ to India three times--in August 1999, January 2001, and in April and May 2002. However, she has never been approached by anyone representing a foreign government or intelligence agency either while in the U.S. or while visiting India. (Items 1, 2, 3; Exhibit A)

All of her immediate family are now naturalized U.S. citizens. (Exhibit A) Her husband and the child born in 1980 became naturalized U.S. citizens in May 2000. Her child born in 1974 became a naturalized U.S. citizen in August

2000. When Applicant and her husband left India, they had approximate \$83,000⁽⁴⁾ in an Indian bank. This sum includes part of her retirement benefit from the bank. The couple also have a certificate of deposit account in a U.S. bank. (Items 1, 2)

The certificates of deposit in India now amount to approximately \$30,000. Her retirement benefit is approximately \$145 per month. They sold the stock they owned in several companies in India which she estimated in September 2002 to be worth \$1,000. Although in September 2002 her husband owned property in India which he had been unable to sell because the market was not good, he did sell the apartment in July 2003. Applicant and her husband now own no property outside the U.S. (Item 3) Applicant considers the U.S. her home and will always be loyal to the U.S. She is actively involved in volunteer activities. (Exhibit A)

She has several elderly family members who are citizens of India and remain there. She has uncles, aunts and cousins; she talks to them occasionally three to four times a year. None of them work for the Indian government. She provides no financial assistance to any of these family members. She stated that "None of my relatives, who are citizens of India, could influence me to act against the US." (Items 1, 2; Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline B - Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

(5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline C - Foreign Preference

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying⁽⁵⁾ include:

(1) The exercise of dual citizenship;

(2) Possession and/or use of a foreign passport⁽⁶⁾;

Conditions that could mitigate security concerns include:

(1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(4) Individual has expressed a willingness to renounce dual citizenship.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline B - Foreign Influence

Applicant's has controverted foreign influence concerns as her immediate family members are all naturalized U.S. citizens and she has substantially diminished her economic ties to India. They have sold the apartment and stock in India which she originally reported owning. While she continues to receive retirement benefits from her job in India and retains some savings in a bank in India which are tied to her retirement benefits, these foreign financial interests are minimal and not sufficient to affect her security responsibilities. Further her remaining family ties in India are confined to elderly relatives who have no ties to the Government of India. She has limited contact with them. Thus, she has mitigated possible foreign influence security concerns raised by her close ties of affection to citizens of a foreign country which are confined to her aunts, uncles, and cousins who remain citizens of India.

Acts indicative of foreign influence warrant careful scrutiny as the Government raised a special concern over India and a history of espionage against the U.S., both military and economic. (Items 6-13) On the other hand, the U.S. Department of State Consular Information Sheet establishes that India is the world's largest democratic republic. (Item 6) Indeed, India has supported the global coalition against terrorism in 2002 and engaged in its own efforts to address internal and external threats. (Item 9) Further, both the U.S. and India currently recognize the mutual benefits of a strong partnership, and that partnership continues to grow with astonishing rapidity. For example, as the ancient Silk Road linked India to the West; so the software trade now links India to the United States. Given these increasing economic and diplomatic ties, it seems extremely unlikely that the government of India would subject Applicant's elderly relatives to duress in order to establish foreign influence over Applicant. Security concerns are further mitigated by the fact that Applicant's relatives have no ties to the foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Further on MC 3, her contact and correspondence with foreign citizens are casual and infrequent. It is improbable that any of her family members would create a situation that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Any risk of foreign duress or influence on Applicant and her immediate family would appear to be slight and clearly manageable. Applicant attests that she has never experienced any such foreign pressure either in the U.S. or in India on her trips there.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so any foreign influence concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

Guideline C - Foreign Preference

By cancelling her passport from India, Applicant mitigated security concerns over her possible preference for a foreign country over the United States. At the time she applied for a security clearance, she was a naturalized U.S. citizen. However, Applicant did hold a passport from India which raised security concerns under disqualifying condition (DC) (1) the exercise of dual citizenship and (2) possession and/or use of a foreign passport. DoD policy clarification of August 16, 2000 required any "possession and/or use of a foreign passport" may be a disqualifying (7) condition. Applicant complied with DoD guidance by surrendering her foreign passport as she provided evidence that her foreign passport was cancelled.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign preference warrant careful scrutiny. Applicant meets the mitigation guidelines as under MC (1), as her dual citizenship was based solely on parents' citizenship or birth in a foreign country. To her credit, Applicant voluntarily complied with DoD guidance soon after she became aware of the proper way for individuals to take corrective avenue to mitigate this security concern by surrendering her foreign passport. She affirms that her preference is for the U.S. After reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude she has mitigated the concerns and has indicated her clear preference for the United States. Hence, I decide SOR paragraph 2 and subparagraph 2.a. for Applicant.

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

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a.: 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. In her response to the FORM Applicant said that "Given an opportunity I would be happy to present myself to the Department Counsel members and or the Administrative Judge to clarify any points." (Exhibit A) However she did not specifically request a hearing.

3. There is no evidence in the record as to which passport she used on her trips to India.
4. In her answer to the SOR Applicant stated that their joint savings totaled \$83,000 when the were in India. (Item 3)
5. See also the DoD August 16, 2000, **Clarification of Department of Defense Policy on Foreign Preference** which clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government. Modification of the Guideline is not required. (Item 14)

6. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
7. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.