

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant is a 50-year-old naturalized citizen of the United States employed by a defense contractor. His parents, siblings and their spouses are citizens and residents of India. Applicant maintains a bank account in India to facilitate the transfer of funds to his parents for their support and maintenance when the need arises. Applicant failed to note on his security clearance application his foreign bank account and employment with a foreign company between 1977 and 1978, however it was not deliberate. Considering Applicant's close ties to the United States, including his citizenship, his long-term residency and employment, and his financial holdings, Applicant has mitigated the security concerns arising from the foreign residence of his family members and his bank account in a foreign country. Clearance is granted.

CASENO: 02-13593.h1

DATE: 08/10/2004

DATE: August 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13593

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 50-year-old naturalized citizen of the United States employed by a defense contractor. His parents, siblings and their spouses are citizens and residents of India. Applicant maintains a bank account in India to facilitate the transfer of funds to his parents for their support and maintenance when the need arises. Applicant failed to note on his security clearance application his foreign bank account and employment with a foreign company between 1977 and 1978, however it was not deliberate. Considering Applicant's close ties to the United States, including his citizenship, his long-term residency and employment, and his financial holdings, Applicant has mitigated the security concerns arising from the foreign residence of his family members and his bank account in a foreign country. Clearance is granted.

STATEMENT OF THE CASE

Under Executive Order 10865, *Safeguarding Classified Information Within Industry*, (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 16, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on October 13, 2003. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on January 8, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the

FORM on January 28, 2004, but did not provide additional materials for consideration. The case was initially assigned to another administrative judge but was transferred to me on August 3, 2004.

FINDINGS OF FACT

Applicant admitted all the factual allegations under Guideline B concerning his relatives and his bank account in a foreign country. Item 3, Applicant's Answer to SOR, dated October 13, 2003, at 1. Those admissions are incorporated herein as findings of fact. He denied the allegations under Guideline E that he intentionally falsified certain matters on his security clearance application. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant was born in India in 1953. Item 5, Security Clearance Application, dated February 15, 2000, at 1. He obtained his formal education in India, receiving a Bachelor of Engineering (B.E.) in 1975, and a Master of Technology (M. Tech.) in 1977. Item 3, *supra*, at 8. Applicant worked for an electronics firm in India between 1977 and 1978. *Id.* Between 1978 and 1981, he pursued a Doctorate of Philosophy (Ph. D.) while working for a technological institute in India. *Id.* After receiving his Ph.D. in 1981, he continued to work for the technological institute until 1983. *Id.* Between 1983 and 1987, Applicant did post-doctoral research work in London, England, becoming a permanent resident of the United Kingdom during that time. Item 6, Statement of Subject, dated 30 November 2001, at 1. Applicant began working for a defense contractor in the United States in 1998, serving successively as a staff engineer, scientist, senior scientist, and chief scientist since then. Item 3, *supra*, at 16. He became a naturalized citizen of the United States in December 1998. Applicant seeks a security clearance for the first time. Item 5, *supra*, at 7.

Applicant got married in India in 1980. Item 5, *supra*, at 2. Applicant's wife became a naturalized citizen of the United States in 1998. *Id.* at 14. They have one child of the marriage, a son, who is also a naturalized citizen of the United States. Item 6, *supra* at 2. Their son lives with them in the United States. *Id.*

Several of Applicant's immediate family members are citizens and residents of India. Item 5, *supra*, at 2-3, 9; Item 6, *supra*, at 4-5. Applicant travels to India to visit his family members approximately every three years. Item 6, *supra*, at 4. Applicant traveled to India in 1993, 1996, and 1998. Item 5, *supra*, at 5; Item 6, *supra*, at 6-7. His father is a retired pharmacist, and his mother has always been a homemaker. Item 6, *supra*, at 4. Applicant does not regularly send money to his family in India, but has sent them funds over the years when a special need arises. *Id.* at 3. Applicant sent between \$15,000.00 and \$20,000.00 to his father when he became ill. *Id.* Applicant's brother is a retired banker, who now lives with his parents and owns a farm. *Id.* at 5. Applicant contacts his parents and his brother by telephone and e-mail about once a month. *Id.* at 4, 5.

Applicant's eldest sister is a citizen and resident of India. Item 5, *supra*, at 3. She is a homemaker, while her husband (Applicant's brother-in-law) works for a government firm specializing in civil engineering. Item 6, *supra*, at 5. Applicant is not close to his eldest sister or her husband, and does not maintain regular contact. *Id.*

Applicant's second sister is also the mother of his wife; Applicant indicates this was an accepted practice in India until recently. *Id.* at 4-5. His second sister is a homemaker and her husband is a retired employee of a perfume company. Item 6, *supra*, at 4. Applicant's sees them during his visits to India, and speaks with them by telephone about every one to three months. *Id.* His in-laws visited his family in the United States about five years ago. *Id.*.

Applicant submitted an SF 86, Security Clearance Application, dated February 15, 2000. Item 5, *supra*, at 1. In answer to Question 12, Applicant denied having any foreign property, business connections, or financial interests. *Id.* at 4. At that time, Applicant had a non-resident account in a bank in India held jointly with his father. Item 6, *supra*, at 3. There is no evidence whether there were any funds in the account at the time of the statement.

The SF 86, Security Clearance Application, also included Question 13, inquiring whether Applicant had ever been employed by or acted as a consultant for a foreign government, firm, or agency. Item 5, *supra*, at 4. Applicant answered "Yes" to this question, and listed employment with a technology firm in England between 1987 and 1989. *Id.* Applicant was employed with an electronics firm in India for 11 months between 1977 and 1978, but did not report that fact.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B - Foreign Influence: A security risk may exist when an applicant's immediate family, or other persons to whom he 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. Directive, ¶ E2.A2.1.1.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline B, Foreign Influence.

The Government's documentary matters and Applicant's admissions constitute substantial evidence of several disqualifying conditions under Guideline B of the Directive. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "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." Additionally, ¶ E2.A2.1.2.3 provides that it may be disqualifying if an applicant has "relatives . . . or associates who are connected to a foreign government."

Applicant's immediate family members, specifically his parents, a brother, and two sisters, reside in India. Additionally, his brothers-in-law are persons to whom Applicant has close ties of affection. Applicant's contacts with these foreign citizens are regular and significant. The substantial evidence is sufficient to raise security concerns under ¶ E2.A2.1.2.1. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001).

These security concerns can be mitigated where it is determined that the family members or associates in question are not agents of a foreign power, and they are not 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 involved and the United States. Directive, ¶ E2.A2.1.3.1.

Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers and sisters. The evidence indicates that none of Applicant's immediate family members are agents of a foreign power: his father is retired, his mother and sisters have always been homemakers, and his brother owns a farm.

Applicant's brother-in-law works for a government organization specializing in civil engineering. There is no information indicating the brother-in-law's position within the organization, thus I am unable to determine he is not an agent of a foreign power under ¶ E2.A2.2.1.3.1. See 50 U.S.C. § 1801(b). Nonetheless, considering Applicant's lack of

regular contact with his brother-in-law, it seems unlikely that Applicant could be exploited by a foreign power through this relationship.

In assessing whether relatives are vulnerable to exploitation, a judge should consider several factors, including the character of the government of the relevant foreign country. India is not a hostile country nor are its interests inimical to the United States. The United States and India are the world's largest democracies, and enjoy good relations. The United States is India's largest trading partner. Although there have been concerns about nuclear proliferation, the United States and India share a common goal of promoting stability in Asia and fighting terrorism. Of course,

nothing in Guideline B (Foreign Influence) indicates or suggests that it is limited to countries that are hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.

ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Department Counsel submitted Item 8, the Office of the National Counterintelligence Executive's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000. The report includes a summary of a survey of a dozen Fortune 500 companies that indicated India is one of the most active collectors of foreign economic information or industrial espionage.

It is important to consider the vulnerability to duress of Applicant's relatives in India. His immediate family members are not government employees or annuitants. His father was self-employed and has now retired. Similarly, his brother is retired from banking, and owns a farm. His mother and sisters are homemakers. This lessens the opportunity for adverse influence.

Another significant factor is Applicant's vulnerability to duress. He has extensive ties to the United States, having lived in this country and worked for the same defense contractor for about 15 years. Applicant is an internationally recognized expert on antenna and microwave engineering, especially shaped reflector technology used on satellites, and has risen to a level of prominence within the defense contractor's organization. Applicant's most immediate family members are his wife and son, both of whom are naturalized citizens and residents of the United States. All his financial interests are in the United States, except for the single bank account discussed below. See Directive, ¶ E2.A2.1.3.5. Considering the extent of his ties to the United States, it appears Applicant is not unusually vulnerable to duress.

Paragraph 1.f of the SOR also alleges that Applicant maintains a bank account in India for the financial interests of his family members there, and that he previously sent about \$15,000.00 to the account. Applicant admitted these facts. Item 3, *supra*, at 1. Under ¶ E2.A2.1.2.8 of the Directive, it may be a disqualifying condition if an applicant holds "A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence."

The only specific evidence about this bank account comes from Applicant. He explains that he opened the account jointly with his father as a means to safely and conveniently transfer funds to his parents for payment of medical bills and other expenses when necessary. Item 3, *supra*, at 1; Item 6, *supra*, at 3. Applicant indicates the account is merely a conduit for funds, not a repository. Item 3, *supra*, at 1. Applicant does not maintain funds, make withdrawals, or receive bank statements in this account. Item 3, *supra*, at 1; Item 6, *supra*, at 3. Significantly, there is no information whether this account held substantial funds for any significant period. Applicant's financial contributions are important factors in assessing the closeness of his relationship with his parents. However, the mere existence of a bank account, without any indication of the amount of funds held therein, does not constitute evidence of a "substantial financial interest" in a foreign country under ¶ E2.A2.1.2.8 of the Directive.

I considered all the circumstances in light of the "whole person" concept. I conclude Applicant has mitigated the security concerns arising from his having relatives and a bank account in India.

Guideline E, Personal Conduct.

Under ¶ E2.A5.1.2.2 of the Directive, "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . used to conduct investigations . . . [or] determine security clearance eligibility or trustworthiness . . ." may be disqualifying. The SOR alleges Applicant deliberately falsified relevant and material facts on his SF 86, Security Clearance Application. Specifically, the Government alleges Applicant falsified information concealing the Indian bank account discussed above, and that he worked for an Indian electronics company between 1977 and 1978. Applicant admitted that he failed to include the information on his security clearance application, but contends it was unintentional. Item 3, *supra*, at 1.

With regard to the bank account in India, the specific question on the security clearance application was, "Do you have any foreign property, business connections, or financial interests?" Applicant answered, "No." The question did not specifically inquire about bank accounts. As discussed above, Applicant indicated he used it only as a conduit for funds, and not as a repository. Applicant indicated he did not list the account on his security clearance application because he did not "think of it as a regular account." Item 6, *supra*, at 3. It may not be immediately apparent to a reasonable person that a bank account used only as a conduit for funds transfers is a "financial interest" requiring reporting. I conclude Applicant did not deliberately intend to conceal or falsify the facts concerning his Indian bank account.

With regard to his employment with an electronics firm in India between 1977 and 1978, Applicant admitted he did not report it on the security clearance application, but contends it was an inadvertent omission. Applicant submitted copies of his application for employment with his current employer dated 1988, his resume, and his application for selection for senior technical fellow dated 2001. Item 3, *supra*. Each document reflected his employment with the electronics firm between 1977 and 1978. Considering that Applicant was employed there for less than one year, that the employment

was over 20 years prior to his completion of the security clearance application, and Applicant's previous reports of the position to his current employer, I conclude his omission on the security clearance application was inadvertent. Thus, I find Applicant did not deliberately omit or falsify relevant or material facts concerning his previous employment on the security clearance application.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.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.

Michael J. Breslin

Administrative Judge