

DATE: April 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16085

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 34-year-old native of India, became a naturalized citizen of Australia, married a U.S. citizen, immigrated to the U.S. and became a U.S. citizen. Applicant successfully refuted foreign preference and mitigated foreign influence personnel security guideline concerns. Applicant demonstrated it is in the national interest to grant him a clearance. Clearance is granted.

STATEMENT OF THE CASE

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant Applicant a clearance. In accordance with the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 2 January 2003 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the foreign preference (Guideline C) and foreign influence (Guideline B) personnel security guidelines.

Applicant answered the SOR in writing on 17 January 2003. The case was assigned to me on 10 February 2003. On 21 March 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of three exhibits (1a, 1b, and 2). Applicant testified on his own behalf, called two witnesses to testify, and submitted 7 exhibits at the hearing in addition to the exhibit attached to his answer. A transcript (Tr.) of the proceeding was received on 31 March 2003.

FINDINGS OF FACT

Applicant is 34-year-old native of India who is employed by a defense contractor. Exs. 1a, 1b. After graduating from college with a degree in electrical engineering, and working as an electronics engineer for two years, he immigrated to

Australia in April 1992. Tr. 30, 32. Applicant was happy in Australia and became a citizen in October 1994, but he never voted. Tr. 32, 65. When he became a citizen of Australia, he was required to relinquish his Indian passport to Australian authorities. Tr. 31. He obtained an Australian passport and returned to India to visit his family. Tr. 32. While visiting, he met a U.S. citizen who had emigrated from India in 1983. Tr. 32, 33. They decided to marry and to make their home in the U.S. Tr. 33. Applicant's wife sponsored him into the U.S. and he immigrated in April 1994. Tr. 34. Applicant's wife gave birth to their daughter in the U.S. in May 1998. Ex. 1a, 1b.

Applicant became a U.S. citizen in 1999. The naturalization officer refused to take his Australian passport. Tr. 35-6. But, he surrendered his passport to an officer of the Australian Embassy and it has been canceled. Tr. 43-44; Ex. D. He is no longer citizen of Australia. Tr.44; Ex. C. Applicant never traveled on his Australian passport after he became a U.S. citizen. Tr. 42; Ex. D. He now has no connections with Australia. Tr. 66.

Applicant's parents are citizens and residents of India. His father is retired from work in the fertilizer business. Tr. 49, 56. His mother is a homemaker. Neither of them has been involved in politics. Tr. 57. Applicant talks to them on the telephone once or twice a month. Tr. 62.

Applicant's brother is a citizen of India, but has resided in Canada with his wife and children, since August 2000. Tr. 50. They intend to become Canadian citizens as soon as possible. Tr. 51.

Applicant has three sisters. One is married to a U.S. citizen and intends to become a U.S. citizen as soon as she meets the residency requirements. Tr. 51. Her son was born in the U.S. Another sister immigrated to Canada in August 2001 with her husband and children. Tr. 52. They intend to become Canadian citizens. Applicant's third sister resides in India with her husband. Tr. 52.

None of Applicant's siblings are politically active. Although Applicant keeps in touch with them, they do not discuss his job. Tr. 58. He does not provide financial support to his parents or siblings. Applicant accepts the security of the U.S. as the highest priority and would report any overtures about his job or classified information to the proper authorities. Tr. 61.

Applicant's mother-in-law is a citizen of India. She immigrated to the U.S. with her husband and children in 1983. Although they became U.S. citizens, she does not speak English and has not qualified to become a U.S. citizen. Answer at 5.

Applicant's supervisor and security officer testified that he is an excellent employee who follows all the rules and regulation established by the company.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national

interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. May 9, 2001). Once the Government has established a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *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 (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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

CONCLUSIONS

Guideline C-Foreign Preference

In the SOR, DOHA alleged under Guideline C that Applicant had a preference for a foreign country over the U.S. by exercising dual citizenship with Australia and possessing both Indian and Australian passports.

Under Guideline C, when an individual acts in such a way as to indicate a preference for a foreign country over the United States, he may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive ¶ E2.A3 .1.1. The Government alleged the following applicable conditions raise a security concern in this case:

- (1) The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.
- (2) Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

The fact that the indicators of foreign preference occurred before Applicant obtained U.S. citizenship is an applicable mitigating factor. Directive ¶ E2.A3.1.3.2.

The evidence of record clearly demonstrates that Applicant has not exercised dual citizenship with the United States and Australia and does not possess a valid passport from either India or Australia. Finding is for Applicant.

Guideline B-Foreign Influence

In the SOR, DOHA alleged under Guideline B that Applicant was subject to foreign influence because his parents, some of his siblings, and his mother-in-law are not citizens of the U.S. and that some of them reside in countries other than the U.S.

Under Guideline B, a security risk may exist when an individual's immediate family, 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 create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Directive ¶ E2.A2.1.1. It is a security concern that may be disqualifying when 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. Directive ¶ E2.A2.1.2.1. Such security concerns may be mitigated by a finding that the immediate family members 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 persons involved and the United States. Directive ¶ E2.A2.1.3.1.

The Government established by substantial evidence that members of Applicant's immediate family are not citizens or

residents of the U.S. Nevertheless, Applicant successfully mitigated those security concerns. These family members are not agents of a foreign power and Applicant is not in a position to be exploited by them. The U.S. is his home and he intends to live and die in this country. Tr. 91. He understands his duties and will report any overtures to the appropriate authorities. After observing and hearing Applicant, I am convinced that his family members do not represent a credible security risk to this nation. Finding is for Applicant.

FORMAL FINDINGS

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: 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.

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.