

DATE: April 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25080

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When the Applicant became a U.S. citizen in August of 2000, he renounced his Indian citizenship. Although he physically retained his Indian passport, it was "cancelled as [he] acquired U.S. nationality;" and as such, he never used the Indian Passport since acquiring U.S. citizenship. His elderly parents are citizens of and live in India. His father has been retired from the Indian Civil Service for more than 20 years. His mother is a house wife. One brother lives in India and is a businessman. The other has lived in the U.S. for more than 10 years. His in-laws emigrated from Canada more than 40 years ago, and have lived and worked in the U.S. ever since. There is no evidence that any member of his family has any current connection with a foreign government or is in a position to be exploited by any government. Clearance is granted.

STATEMENT OF THE CASE

On October 25, 2002, 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 the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on November 15, 2002.

The case was received by the undersigned on January 14, 2003. A notice of hearing was issued on February 26, 2003, and the case was heard on March 10, 2003. The Government submitted documentary evidence. Testimony was also taken from the Applicant. The transcript was received on March 25, 2003. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militate against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 45 years of age, and is the President of a software company that seeks a security clearance on behalf of the Applicant.

Guideline C - Foreign Preference

1.a. The Applicant first came to the United States in 1980, to get his Masters Degree (Transcript (TR) at page 22 lines 21~24). After college, he worked here for a U.S. computer firm, and eventually became a U.S. citizen in August of 2000 (TR at page 23 lines 13~22). When he was naturalized, the Applicant renounced his Indian citizenship (TR at page 23 line 23 to page 24 line 6). Although he physically retained his Indian passport, he never used it after becoming a U.S. citizen (TR at page 24 line 7 to page 25 line 3). He has since surrendered his Indian passport, and it has been stamped "Passport cancelled as acquired U.S. nationality" (TR at page 25 lines 4~24, and Applicant's Exhibit (AppX) A at pages 2 and 3).

Guideline B - Foreign Influence

2.a. The Applicant's father is a citizen of and lives in India (Government Exhibit (GX) 1 at page 3). He is retired from the Indian Civil Service, has been retired for more than 20 years, and is 81 years of age (TR at page 27 line 24 to page 28 line 21, and GX 1 at page 3). The Applicant's mother is also a citizen of and lives in India (GX 1 at page 3). She is a housewife (TR at page 29 lines 2~5). The Applicant has two brothers (GX 1 at page 4). One lives in India and is a businessman (TR at page 30 lines 9~20). The other brother has lived in the United States for more than 10 years (TR at page 30 line 21 to page 31 line 8).

2.b. The Applicant's in-laws emigrated from Canada more than 40 years ago (TR at page 20 lines 3~15). His father-in-law is retired from a U.S. firm, and his mother-in-law is a real estate broker (TR at page 33 at lines 2~22).

Mitigation

The Chairmen of the Board and CEO of the Applicant's software company finds the Applicant to be "an extremely ethical, highly principled, hard working individual who is well assimilated into the American culture and lifestyle" (AppX C).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Foreign Preference

Condition that could raise a security concern:

2. Possession . . . of a foreign passport;

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship;

Foreign Influence

Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . 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;

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

When the Applicant became a U.S. citizen in 2000, he renounced his Indian citizenship. This was prior to his applying for a security clearance. Although he initially retained his Indian passport, it has not been used since he became an American, and it has recently been "cancelled" due to his acquiring U.S. citizenship. I therefore conclude that the Applicant has not only met but has clearly surpassed the requirement of the last mitigating condition under Guideline C, which merely requires that he "express a willingness to renounce dual citizenship." He was never a dual national, and is now only a U.S. citizen with a U.S. passport. Guideline C is therefore found in his favor.

The Applicant's father is in his 80s and has been retired for more than 20 years. His mother is an elderly housewife. One of the Applicant's brother is a private businessman. He is a citizen of and resides in India. His other brother has lived in

the U.S. for more than a decade. His in-laws have lived in the U.S. for more than 40 years. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in India can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

a. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge