

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant is a 74-year-old employee of a defense contractor. Applicant was born in India, and came to the U.S. in 1954. He worked for defense contractors for over 35 years, and has been employed by his current company since 1980. Applicant has held a security clearance for over 20 years, and worked on numerous classified projects for the national defense. Applicant's brother and three sisters are citizens and residents of India, but his contact with them is casual and infrequent. He also has financial interests in India, but they are insubstantial compared to his extensive financial interests in the United States. Applicant mitigated the security concerns arising from his immediate family members and financial interests in India. The available evidence does not raise any security concerns related to Applicant's personal conduct. Clearance is granted.

CASENO: 03-22188.h1

DATE: 07/15/2005

DATE: July 15, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22188

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

## **FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

## **FOR APPLICANT**

Laura J. Anderson, Esq.

### **SYNOPSIS**

Applicant is a 74-year-old employee of a defense contractor. Applicant was born in India, and came to the U.S. in 1954. He worked for defense contractors for over 35 years, and has been employed by his current company since 1980. Applicant has held a security clearance for over 20 years, and worked on numerous classified projects for the national defense. Applicant's brother and three sisters are citizens and residents of India, but his contact with them is casual and infrequent. He also has financial interests in India, but they are insubstantial compared to his extensive financial interests in the United States. Applicant mitigated the security concerns arising from his immediate family members and financial interests in India. The available evidence does not raise any security concerns related to Applicant's personal conduct. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 24, 2002, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On November 2, 2004, 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 by letter dated December 2, 2004, with five attachments. Applicant originally elected to have his case decided without a hearing. On January 26, 2005, Applicant's counsel entered her appearance and requested a hearing before an administrative judge.

The case was assigned to me on January 31, 2005. With the concurrence of the parties, I conducted the hearing on March 8, 2005. The department counsel introduced four exhibits. Applicant's counsel presented documents admitted as Exhibits A through E, and the testimony of three witnesses. Applicant testified on his own behalf. Upon the request of Applicant's counsel, I left the record open to allow the submission of a final brief. On March 24, 2005, I granted an additional enlargement of time until April 12, 2005, for Applicant's counsel to submit the brief. I received the brief on April 11, 2005, and admitted it, without objection, as Hearing Exhibit I.

### FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR, with explanations. Answer to SOR, dated December 2, 2004, at 1-4. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 74 years old. Ex. 3 at 1. He was born in India in 1931. Ex. 1 at 1. He attended high school and two colleges in India, and obtained his bachelor of science degree in electrical engineering in 1952. Tr. at 22. Between 1952 and 1954, he lived and worked in England. Tr. at 23.

In 1954, Applicant immigrated to the United States. Tr. at 23. He worked for a U.S. electrical firm between 1954 and 1965. *Id.* Applicant applied for permanent residency at the first opportunity and became a naturalized citizen of the United States in April 1964. Ex. 1 at 1. In 1965, he went back to school at an American university and earned a master's degree in electrical engineering in 1967.

In 1967, Applicant joined a large defense contracting firm. Tr. at 23. Between 1967 and 1971, while working for the contractor, he attended the Ph.D. program at a major U.S. university. Applicant completed all the required course work, but was transferred before he could finish his Ph.D. *Id.* Applicant worked several years supporting highly technical, military-related projects. Tr. at 66.

In 1980, Applicant began working for his current employer, a major defense contractor. Tr. at 24. He served as the leader of a software group working on the avionics of a military aircraft. *Id.* Shortly after starting, Applicant was working late to solve a software problem on a major project and took with him a large book with unclassified, nonproprietary information. Tr. at 53. Leaving work after dark, Applicant found the main gate closed and only a turnstile as an exit. *Id.* Applicant could not get through the turnstile with the book, so he pushed the book through the fence by the turnstile. *Id.*; Tr. at 93. A security guard stopped him and questioned the incident. Applicant's supervisor assured the guard Applicant could take the book with him. Applicant was never disciplined about the incident in any way. Tr. at 54, 93.

Applicant obtained a security clearance in 1983. Ex. 1 at 7; Tr. at 24. Later, Applicant obtained a higher clearance for several years to work on a specific classified program. Tr. at 25. After 1985, Applicant worked on several high-level, classified projects for the defense contractor. Tr. at 27.

In about 1985, while working on a classified project, Applicant signed out a classified document. Tr. at 57. He then turned the document over to a co-worker, so that Applicant could attend a meeting. *Id.* The co-worker was working on the same project and was properly cleared to possess the document. When Applicant returned, the co-worker was not there. Tr. at 58. Applicant reported the incident to security, who investigated and found the co-worker inadvertently took the document home in his briefcase. Tr. at 59, 94. Applicant subsequently gave a statement to FBI investigators. *Id.* Applicant was not found to have caused a security breach and was never disciplined about the incident. Tr. at 60.

In 1990, Applicant became an associate technical fellow at the company, a privilege reserved for the firm's elite engineers. Tr. at 28-29. As a technical fellow, he helps mentor junior engineers. He is also responsible for his branch's library. Tr. at 30. In that capacity, he is encouraged to take books home for review, to determine whether they are suitable for the company's engineers. Tr. at 95, 106. Typically, he will bring home three or four books at a time, and return them the next day. Tr. at 95. In 2002, Applicant began working in the defense contractor's research and development branch. Tr. at 28.

Applicant was married in 1960. His wife was born in India but is now a citizen and resident of the United States. Ex. 1 at 2-3. Applicant has four children who are citizens and residents of the United States. Tr. at 76. His third son graduated from a U.S. military academy and currently serves as a high-ranking military officer with top-level security clearances. Tr. at 51, 126. Applicant also has six grandchildren living in the United States. Tr. at 51.

Applicant's parents and parents-in-law were citizens and residents of India; all are presently deceased. Ex. 1 at 3-4. Applicant had two older brothers and four sisters living in India. Tr. at 32. One brother is deceased; the other is a year older than Applicant and is retired. Tr. at 33. One of Applicant's sisters is also deceased; three others are retired and living with their sons and grandchildren. Tr. at 34. None of Applicant's brothers or sisters have or had any affiliation with the government, military forces, or any political party of India. Tr. at 34, 90. Applicant does not maintain regular contact with his siblings. Tr. at 34. He saw his brother and oldest sister when he visited India. Tr. at 84.

Applicant returned to India in 1996, 2002, and 2003. Tr. at 35; Ex. 1 at 5. One trip was for religious purposes; Applicant and his wife visited the site of an Indian saint. Tr. at 37. Another trip was for the wedding of his daughter, held in India to secure the blessing of the Indian saint. *Id.*

Applicant also has many nephews in India. Tr. at 40, 72. One is the child of his deceased sister. *Id.*; Tr. at 72. The nephew runs a company in India. Applicant has no regular contact with this nephew; he last saw him during his visits to India. Tr. at 41.

Most of Applicant's financial assets are in the United States. He owns two homes, and has substantial investments in the United States. Tr. at 46-47, 48-49. In addition to his salary from the defense contractor, he draws a pension from his employer, and gets Social Security benefits. Tr. at 47.

Applicant owns some real property in India. In about 1982, he bought a condominium as an investment, partly to placate his father's concerns about whether he would ever return to India. Tr. at 42. The property is uninhabitable. Applicant has never lived there and has never derived any income from the property. Tr. at 43. He plans to sell the condominium, which he values at about \$30,000.00. *Id.*; Tr. at 80. Applicant originally intended to live there after his retirement. Ex. 2. Now, Applicant intends to live permanently in the U.S. after retirement, to be closer to his children and reliable medical care. Tr. at 51. He intends to travel to India occasionally to visit spiritual sites.

Applicant inherited some land from his father. Tr. at 43. The land is not developed or used for farming. Applicant has never derived any income from the property, and would like to sell it if he could obtain a reasonable price. Tr. at 44. He believes it is worth about \$10,000.00. Applicant does not rely on his property holding in India for potential retirement purposes.

Applicant also has some financial investments (stocks) in India worth about \$30,000.00. He has held the investments for many years.

India is a democratic country with extensive strategic, economic, and cultural ties to the United States. Ex. E. Although the two countries differed over India's nuclear proliferation in the past, the U.S. recognizes India as a growing world power committed to combating international terrorism. The U.S. and India enjoy substantial trade, especially in scientific and technical fields. According to a survey of nearly a dozen selected Fortune 500 companies conducted by the National Counterintelligence Center in 2000, India is one of the most active collectors of foreign economic information. Ex. 3.

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

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 individual's immediate family, including cohabitants, 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. 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. 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.

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.

## 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.

### **Foreign Influence**

Paragraph E2.A2.1.2.1 of the Directive provides that it may be disqualifying 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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's brother and three sisters are "immediate family members," and all are citizens and residents of India. Thus, this potentially disqualifying condition applies.

Paragraph 1.b of the SOR alleges that Applicant has a nephew who is a citizen and resident of India. The SOR does not further identify the individual in question. In fact, Applicant has many nephews who are citizens and residents of India. In any event, Applicant has little contact, if any, with his nephews in India. I find that he does not have "close ties of affection or obligation" with any nephew, therefore this potentially disqualifying condition does not apply.

Under ¶ E2.A2.1.2.8 of the Directive, it may be disqualifying where an applicant has "[a] substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence." Applicant owns a condominium in India worth about \$30,000.00. It is uninhabitable. Applicant never derived any income from the property, and intends to sell it when possible. He also owns unimproved farm land he inherited from his father, valued at about \$10,000.00. Applicant has never received income or profit from the property, and would like to sell it. Finally, Applicant has financial investments in India worth about \$30,000.00. I find this potentially disqualifying condition applies.

Under the Directive, potentially disqualifying concerns can be mitigated under certain conditions. It is potentially mitigating where the "immediate family member(s), 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 involved and the United States." Directive, ¶ E2.A2.1.3.1.

The evidence indicates none of Applicant's relatives is an "agent of a foreign power" as defined by 50 U.S.C.A. § 1801(b). None of them are or have ever been employees of or affiliated with the government of India, its military forces, or any political party or group in the country.

In assessing whether an applicant's relatives in a foreign country are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. India is a democratic country with a well-developed system of law committed to the protection of individual rights. It is significant, although not determinative, that India has good relations with the United States. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Under the circumstances, the possibility that a "foreign power" in India would attempt to exploit or pressure Applicant's relatives to force Applicant to act adversely to the interests of the United States is remote.

It is also important to consider the vulnerability to exploitation of Applicant's relatives and associates in India. Applicant's immediate family members have no connection to the government or any foreign power in India. All are retired. I conclude Applicant's immediate family members in India are not unusually vulnerable to exploitation from a foreign power. Weighing all these factors, I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant has little contact with his brother and sisters in India; he does not contact them by telephone, e-mail or letters. He saw his one brother and one sister briefly when he visited India. Normally, it may be presumed that contact with immediate family members is not casual. However, as the Appeal Board has observed, "Nothing in the plain language of Foreign Influence Mitigating Condition 3 precludes its application to an applicant's immediate family members. See, e.g., ISCR Case No. 98-0592 (May 4, 1999) at p. 7." ISCR Case No. 00-0484 (Appeal Board, Feb 1, 2002). Here, Applicant has very little contact with his family members. He has visited India only a few times since coming to the U.S. in 1954. This potentially mitigating condition applies.

Paragraph E2.A2.1.3.5 of the Directive applies where, "[f]oreign financial interests are minimal and not sufficient to affect the individual's security responsibilities." Applicant's financial interests in real estate and investments in India are worth about \$70,000.00. However, his financial interests in the U.S., including his present salary, his real estate holdings, his investments, and his right to regular income from his pension and social security benefits, greatly exceeds his foreign interests. In this case, I conclude Applicant's foreign financial interests are minimal and are not sufficient to affect his security responsibilities.



I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a U.S. citizen by choice, and has lived in this country for more than 50 years. His closest relations-his wife, children, and grandchildren-are citizens and residents of the United States. He has substantial assets in this country, including real estate, a pension, social security retirement benefits, and investments. His pension and social security benefits alone greatly outweigh the value of his financial holdings in India. Applicant has worked for U.S. defense contractors for over 35 years, and has held security clearance (including a high-level clearance) for about 25 years. His professional standing is with a U.S. firm. Applicant has very little contact with his relatives in India. Considering his integrity, loyalty, and dedication, Applicant is not vulnerable to exploitation or duress applied through his relatives in India. I conclude Applicant has mitigated the potential security concerns arising from his immediate family members and financial assets in India.

## **Personal Conduct**

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.1 of the Directive, "[r]eliable, unfavorable information" that shows questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations may be disqualifying. Similarly, ¶ E2.A5.1.2.5 applies where the evidence shows a "pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency."

Paragraph 2.a of the SOR alleges that in 1980, Applicant was informally reprimanded for throwing a book over a security turnstile. The available evidence indicates Applicant did push a large book over a fence because he could not get through the turnstile while carrying the book. The evidence indicates the book was not classified or protected material, Applicant was authorized to take it home, that he did not violate any security regulations, and that he was not disciplined in any way for the incident. I conclude the evidence concerning this incident does not support a finding that it is potentially disqualifying.

Paragraph 2.b of the SOR alleges Applicant was "interviewed" by the FBI because Applicant left a classified document with a co-worker, who later took it home. While the allegation is factually correct, there is no indication Applicant violated any rule or otherwise acted improperly in this instance. The available evidence indicates he was authorized to give the classified document to the co-worker, who was authorized to receive and possess it. The security violation occurred when the co-worker improperly took the document home. The evidence does not support a finding that Applicant's conduct was potentially disqualifying under the Directive.

Paragraph 2.c of the SOR asserts that Applicant takes books owned by the defense contractor to his home to further his plans to write a book about software after retiring. It is true that Applicant takes home books owned by the company for

his review. However, not only is this authorized, it is encouraged by the company, to increase their technical experts education and professional qualifications, and to improve the library for its other engineers. This evidence does not constitute potentially disqualifying information.

I considered all the available evidence in light of the guidelines. I conclude the evidence does not raise any potentially disqualifying conditions under the guideline for Personal Conduct.

### **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

Subparagraph 2.c: 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