

DATE: October 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07242

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign preference, including possession and use of a valid foreign passport, and his foreign influence, including foreign family members, have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On January 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on January 31, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 20, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 23, 2004. At the hearing the Government presented seven exhibits. The Applicant called three witnesses to testify on his behalf and he presented nine exhibits. He also testified on his own behalf. The official transcript (Tr.) was received on August 12, 2004.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum with the SOR.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 35 years of age and holds a asters Degree in Electrical Engineering. He is employed as a Communications

Systems Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of India and the United States. The Applicant was born in 1965 in India to Indian parents. He first came to the United States in 1989, to attend college. Except for an eight month period where he was assigned by his company to work in Europe, he has remained in the United States since then. In May 1999, he obtained an Indian passport that was not to expire until May 2019.

In October 2001, the Applicant became a naturalized United States, and within a month, he applied for a United States passport. (See Applicant's Exhibits F and G). The Applicant testified that under Indian Law, when you swear the oath of naturalization to another country, you automatically renounce your Indian citizenship. The Applicant considered his Indian passport void at that time. (Tr. p. 48).

Still after learning of the provisions of the Money Memorandum, the Applicant returned his Indian passport to the Indian consulate to get it canceled. (Tr. p. 48).

In May 2000, the Applicant purchased an apartment in India for his parents to live in. He spent approximately \$27,000.00 on the apartment. The Applicant has no bank accounts or any other assets in India. (Tr. p. 63).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's spouse is a citizen of India and currently resides with the Applicant. She came to the United States in 1994 to pursue her education. She obtained a Masters Degree in Electrical Engineering. She and the Applicant were married in 1999. They have a son who was born in the United States. (See Applicant's Exhibit E). She is currently a homemaker but will be starting to work soon. She intends on applying for her United States citizenship when she becomes eligible in June 2005. (Tr. p. 25).

The Applicant's parents, one sister, mother-in-law, and brother-in-law are citizens of and reside in India. His father is a retired Chemist who was employed by the Indian Government for thirty years. He retired in 1998, receives a pension, and has no connection with the Indian Government since then. He now works for a private company and supports his wife without difficulty. His mother and sister in India are housewives and always have been. The Applicant contacts his parents by telephone at least once every two months. He also contacts them by e-mail about once a year. The Applicant's parents have visited the Applicant in the United States on two occasions, every five years. His mother-in-law is also a housewife who used to be employed as a school teacher. His brother-in-law works for a private software company. She receives her husband's pension from the Indian Government that supports her.

The Applicant's other sister is also a citizen of India, however, she resides in the United States. She is an engineer. She is also in the process of obtaining her United States citizenship. She also has a son who is a United States citizen. She has no intent of moving back to India and has no contact or affiliation whatsoever with the Indian Government.

The Applicant has traveled to India in 1997, 1998, 1999 and 2001. Two of the four trips were for the specific purpose of transacting business for his company in the United States under the authority of his company. The trip in 1999, was for the Applicant and his wife to get married in front of relatives in India pursuant to their religious customs. In 2001, the trip was simply to visit family.

The Applicant and his wife have other relatives in India including aunts, uncles and cousins. His contact with these individuals is limited to once every three years or so.

The Applicant's net worth in the United States is between \$700,000.00 and \$800,000.00. (Tr. p. 39 and Applicant's

Exhibits A, B, and C).

Mitigation.

Three witnesses testified on behalf of the Applicant. His wife, an engineer by profession, testified that her husband and son are United States citizens and she plans on becoming one too. Her father was at one time an Aeronautical Engineer for the Indian Air Force but he has since passed away. (Tr. pp. 29-30). Her mother is a house wife and she receives a pension from her husband that supports her. None of her other family members are associated with the Indian Government in any way.

A friend and professional colleague testified that the Applicant has exemplary personal qualities. He is considered responsible and of good judgment. (Tr. pp. 41-42).

A coworker of the Applicant testified that the Applicant is honest, ethical and trustworthy. (Tr. pp. 44-45).

A letter of recommendation from a company manager indicates that the Applicant is a dedicated and competent engineer who has made significant contributions to the engineering department. (*See Applicant's Exhibit D*).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors 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 her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information

or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of India and the United States who possessed an Indian passport. Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his foreign passport to the Indian Consulate. He also understands that by taking the oath of allegiance to the United States, under Indian Law, he has renounced his Indian citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. Although the Applicant's spouse is still an Indian citizen, she is in the process of applying for her United States citizenship. She and the Applicant have a son who is a native born American. Furthermore, the Applicant's contacts with his foreign relatives are not of a nature to influence his security worthiness. There is no evidence in the record that any of his family members any longer have any connection with the Indian Government, or are in a position to be exploited by the Indian Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. In regard to his one foreign asset, specifically the apartment in India he purchased for his parents to live in, its value is approximately \$27,000.00 which is a mere pittance in comparison to the \$800,000.00 in assets that he has in the United States. Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge