

KEYWORD: Foreign Influence

DIGEST: Applicant was born in India and came to the United States in 1968 to pursue higher education. He obtained a master's degree in Electrical Engineering in 1971, and he became a U.S. citizen in 1984. Applicant worked for defense contractors for over 20 years and successfully held a security clearance for more than 18 years. Applicant has one brother, three sisters, and a mother-in-law who are citizens and residents of India, but his contact with them is casual and infrequent. None of his relatives in India are in a position to be exploited by a foreign power in a way that could create security concerns. Applicant has a wife, child and substantial assets in the U.S. Applicant has mitigated the security concerns arising from having relatives who are citizens and residents of India. Clearance is granted.

CASENO: 03-15450.h1

DATE: 04/25/2005

DATE: April 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15450

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

SYNOPSIS

Applicant was born in India and came to the United States in 1968 to pursue higher education. He obtained a master's degree in Electrical Engineering in 1971, and he became a U.S. citizen in 1984. Applicant worked for defense contractors for over 20 years and successfully held a security clearance for more than 18 years. Applicant has one brother, three sisters, and a mother-in-law who are citizens and residents of India, but his contact with them is casual and infrequent. None of his relatives in India are in a position to be exploited by a foreign power in a way that could create security concerns. Applicant has a wife, child and substantial assets in the U.S. Applicant has mitigated the security concerns arising from having relatives who are citizens and residents of India. Clearance is granted.

STATEMENT OF THE CASE

On October 14, 1998, Applicant submitted a security clearance application. 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 August 3, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. (Applicant's first name is misspelled on the SOR; the correct spelling appears in the heading of this opinion.) The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on August 24, 2004. Applicant elected to have a hearing before an administrative judge.

The case was assigned to me on November 3, 2004. With the concurrence of the parties, I conducted the hearing on December 9, 2004. The government introduced six exhibits. Applicant's counsel presented Exhibits A through R,

inclusive, and the testimony of three witnesses. Applicant also testified on his own behalf. DOHA received the hearing transcript (Tr.) on December 28, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.a and 1.f of the SOR. Applicant's Answer to SOR, dated August 24, 2004, at 1-2. He admitted the factual allegations in ¶¶ 1.b, 1.c, 1.d, and 1.e of the SOR. 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 60 years old. He was born in India in 1944. Ex.1 at 1. He came to the United States in 1968 when he was about 24 years old to continue his education. Tr. at 38. He attended graduate school in the U.S. and obtained a master's degree in Electrical Engineering in 1971. Tr. at 36.

After graduation, Applicant continued to live and work in the United States. Applicant became a naturalized citizen of the United States in 1984. Ex. 1 at 1. He was granted a security clearance while working for a defense contractor beginning in 1986. Tr. at 30. He has held a security clearance for over 18 years without adverse incident. Tr. at 31; Ex. Q.

Applicant began working for his present employer in 1993 as a software engineer. Ex. 1 at 2. Applicant's supervisors, co-workers, and neighbors praise his character, reliability, honesty, and trustworthiness. Exs. A, B, C, G, H, I, J, K, L, M, N, O, and R; Tr. at 14-16, 21-22, 25-28. He received special awards from his employer for exceptional duty performance in each of the last five years. Tr. at 37-38; Exs. D, E, and F.

Applicant has been married since 1972 and has a 32-year-old son. Ex. 1 at 4. His wife and son were born in India and became naturalized citizens of the United States in 1997 and 1992, respectively. *Id.*

Applicant's parents were citizens and residents of India. His father died in 1969 and his mother passed away in 2003 (after Applicant completed his security clearance application). Tr. at 36.

Applicant has a brother and three sisters who are citizens and residents of India. Tr. at 32. His 49-year-old brother is a farmer and has no connection to the military or government of India. Tr. at 39; Ex. 1 at 4. Applicant's youngest sister is 55 years old, and works for the tourist department. Tr. at 40. His second sister is about 60 years old, widowed, and has never worked. Her late husband was an officer in the Indian Air Force who died in 1989. Tr. at 41. Applicant's third sister is in her sixties. She is also widowed; her husband was a paratrooper in the Indian Army but died in 1970. Tr. at 43-44. Applicant does not stay in regular contact with his brothers and sisters in India. Tr. at 33. He calls them about once each year. Tr. at 34. He sees them when he visits India; his last trip was about three years ago. Tr. at 33.

His wife's mother is also a citizen and resident of India. Answer to SOR, *supra*, at 1. She has no connection to the military forces or government of India. Tr. at 47-48.

Applicant's father owned farmland that had been in the family for centuries. Tr. at 51. When he died, he left the land to Applicant and his brother. *Id.* When Applicant returned to the United States in 1972 with the intent of making it his permanent home, he gave his interest in the land to his brother. Tr. at 51-52. Applicant has not received any income from the property and does not believe he still has an ownership interest in the land. He testified that when he became a citizen of the U.S., he lost the right to own the property under Indian law. Tr. at 53. A publication from the Embassy of India suggests that nonresident Indians living abroad do not have the right to own agricultural property. Ex. P.

Other than his possible interest in this land, Applicant does not own any foreign property or hold any financial interests outside the United States. Tr. at 36-37. Applicant and his wife have a home and very substantial financial interests in the United States. Tr. at 36.

The United States and India are the world's largest democracies, and enjoy good relations. India is not a hostile country nor are its interests inimical to the United States. 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.

Department Counsel submitted Exhibit 5, the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000 issued by the Office of the National Counterintelligence Executive. The report included 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.

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.

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.

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." 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 three are citizens and residents of India. Thus, this potentially disqualifying condition applies.

Under ¶ E2.A2.1.2.2 of the Directive, it may be disqualifying where an applicant is "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant lives with his wife, and her mother is a citizen and resident of India. I find this potentially disqualifying condition applies.

Paragraph E2.A2.1.2.3 indicates it may be disqualifying where an applicant has, "(r)elatives, cohabitants or associates who are connected with any foreign government." One of Applicant's sisters works for the Department of Tourism, apparently a division of a city government. I find this potentially disqualifying condition applies.

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 inherited land from his father in 1969, but he gave it to his brother in 1972 when he decided to live permanently in the United States. Applicant has never received income or profit from the property, and does not expect to receive any benefit in the future. The available evidence indicates Applicant forfeited his right to own the land when he became a U.S. citizen. I find this potentially disqualifying condition does not apply.

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). One of Applicant's sisters has worked for the Department of Tourism for a city in India. While this may be a government job, it is a position that offers a very low threat of improper influence. None of Applicant's other immediate family members have any association with the government or military forces of another country.

In assessing whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, 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. 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 extremely remote.

It is important to consider the vulnerability to duress of Applicant's relatives and associates in India. Applicant's brother is a farmer with substantial land holdings. It does not appear that he has any connection to the government or any foreign power in India. Two of Applicant's sisters are retired homemakers, in their sixties. Neither of them have any connection to the government or any foreign power in India. One of Applicant's sister is employed by the tourist department of a city government, thereby making her dependent upon the government for her income. I conclude Applicant's immediate family members in India are not unusually vulnerable to duress from a foreign power in India, with the exception of one sister.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through his relatives. Applicant is a U.S. citizen by choice, and has lived in this country most of his adult life. Indeed, he gave up land holdings in India when he became a U.S. citizen. His closest relations-his wife and child-are citizens and residents of the United States. He has substantial assets in this country. Applicant has worked for defense contractors for about 20 years, and has held security clearance (including a high-level clearance) for over 18 years. His professional standing is with U.S. firms. Applicant has very little contact with his relatives in India. Under the circumstances, Applicant is not vulnerable to pressure or duress applied through his relatives. 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, sisters, and mother-in-law in India; he calls them only about once each year. 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 1968. This potentially mitigating condition applies.

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. I conclude Applicant has mitigated the potential security concerns arising from his personal ties to relatives in India.

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

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