

KEYWORD: Foreign Influence

DIGEST: Applicant failed to mitigate security concerns arising from his familial ties to citizens and residents of India and the Russia Federation. Clearance is denied.

CASENO: 03-26083.h1

DATE: 03/08/2006

DATE: March 8, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26083

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant failed to mitigate security concerns arising from his familial ties to citizens and residents of India and the Russia Federation. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 4, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing October 12, 2005, and elected to have a hearing before an administrative judge. On November 25, 2005, the case was assigned to me. The parties agreed to a hearing date of January 27, 2006, and a hearing was convened on that date to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, the Government called no witnesses, submitted three exhibits (Ex. 1 through 3) for admission into evidence and ten official U.S. documents for administrative notice. The Government's documents for administrative notice were marked I through X. The Government's exhibits and documents offered for administrative notice were admitted without objection. Compelling need letters, one from Applicant's facility security officer and the other from his program manager, were also admitted to the administrative record without objection as the Government's administrative documents 1 and 2. Applicant called two witnesses, submitted 20 exhibits (Ex. A through T), and offered 13 documents for administrative notice, which were

identified as Applicant's documents for administrative notice 1 through 13. Applicant's exhibits and documents for administrative notice were admitted without objection.

On November 3, 2005, the Government filed a motion to amend the SOR and timely served the motion on Applicant. The Government's proposed amendment read as follows:

Add Subparagraph 1.f. stating, "Your mother is a citizen and resident of India."

Add Subparagraph 1.g. stating, "Your sister is a citizen and resident of India."

Applicant objected to the amendments and stated that DOHA's adjudicators had a responsibility to draft the SOR to include all relevant allegations. I duly noted Applicant's objection and granted the Government's motion to amend the SOR. At the close of the evidence, the Government moved to amend subparagraph 1.e. of the SOR to read as follows: "You traveled to Russia in at least 1998, 2001, and 2004." Over Applicant's objection, I granted the Government's motion to conform with the record evidence. On February 6, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The amended SOR contains seven allegations of disqualifying conduct charged under Guideline B, Foreign Influence. Applicant admitted all seven allegations. His admissions are incorporated as findings of fact.

Applicant is 54 years old and employed as a senior chemical analyst by a defense contractor. He is assigned to work on issues related to weapons of mass destruction, and he has access to his employer's proprietary information. (Tr 73.) He has held an interim security clearance since May 2002, shortly after he went to work for his present employer. (Ex. 1; Answer to SOR at 5.)

Applicant was born in India and came to the U.S. in 1972. He obtained two graduate degrees at universities in the U.S. He became a U.S. citizen in 1993. (Ex. 1.)

Applicant's mother and sister are citizens and residents of India. Applicant's mother is approximately 80 years old and retired. She lives on her teacher's pension and an inheritance from her late husband. Applicant's only sibling, a sister, is

about 59 years old and cares for the mother. The sister's husband is a retired chemical engineer. (Tr. 93-94.) Applicant was raised, in part, by his maternal grandfather. (Tr. 157.)

Applicant, who is agnostic, has strained relationships with his mother and sister, who follow a religious faith. Applicant's last contact with his sister occurred in 1986, when he last visited India. Applicant last spoke with his mother by telephone in October 2001, when she asked him to come to visit her in India. He didn't go. Neither woman has ever visited Applicant in the U.S. (Tr. 93-97.) Applicant and his mother and sister communicate through Applicant's uncle who lives in the U.S. (Tr. 95; Ex. P.) Applicant suggests his estranged relationships with his mother and sister should not pose a security concern. (Tr. 92-99; 212-214.)

Applicant's business travels took him to the Russia Federation in 1998, where he met and worked with his counterpart Russian scientists. At a dinner with his Russian scientific colleagues, Applicant, who was then approximately 47 years old, remarked he was not married. One of the Russian scientists remarked there were plenty of Russian women looking for husbands. About two years later, in 2000, one of Applicant's Russian scientist colleagues sent him web site addresses where he could meet Russian women. Applicant went on the web sites and contacted several women, but did not receive satisfactory responses. (Ex. 2 at 2.)

In March or April of 2001, Applicant met a Russian woman who had posted her information on an Indian dating service web site. Applicant believes he received the Indian web site from some cousins. (Tr. 99-100.) The woman was a linguist and English teacher. Applicant began daily e-mail correspondence with the woman in April 2001. In July 2001 he traveled to Moscow and saw her daily for about a week. (Ex. 3, at 3.)

In January 2002, the woman came to the U.S. on a fiancee visa. Applicant and the woman were married in March 2002. (Ex. 1; Tr. 101.)

Applicant's wife is a citizen of the Russia Federation. She has permanent resident status and has applied for U.S. citizenship. (Tr. 101.) Applicant's wife's parents and her adult son are citizens and residents of the Russia Federation. The parents are retired civil engineers. The son, who is about 25 years old, is a medical student and lives near his grandparents. Applicant and his wife have provided the son with approximately \$3,000 a year for his education since December 2002. Applicant has never met his wife's parents or her son. (Tr. 127-135.) He has no interest in meeting them. (Tr. 170.)

Applicant's wife visits her parents in the Russia Federation once a year. (Tr. 172.) She is close to her son. (Tr. 173.) She has e-mail contact with him once a week or so, and she speaks with her parents and her son on the telephone once a month. (Tr. 137-138.)

Applicant's wife owns an apartment in the Russia Federation with her son, and she paid the annual taxes on the property.

In an affidavit, Applicant's wife indicated she was transferring her interest in the property to her mother. (Ex. T.)

In 2004, Applicant traveled to the Russia Federation to meet his wife after she had been visiting her parents. He spent a week in Moscow before returning to the U.S. (Answer to SOR, at 3.) While in Moscow, he twice declined a dinner invitation from a friend of his wife's because he didn't want to compromise his security clearance. (138-139.) Applicant acknowledges that the government of the Russia Federation knows about his work because he has worked with Russian scientists on joint projects. (Tr. 178-179)

For the first two years of their marriage, Applicant and his wife got along well together. For the past two years, the couple has experienced domestic problems. Applicant's wife attempted to sue him for divorce in September 2005. (Tr. 111-113; Ex. S.) At the time of his hearing, Applicant said he and his wife were still married and their plans for divorce were suspended pending a decision on his security clearance. (Tr. 113-114; 162.)

Applicant supplied twelve letters of character reference from supervisors and co-workers attesting to his trustworthiness and integrity. (Ex. A; Ex. F through P.)

I take administrative notice that India is a democratic republic with a cooperative relationship with the U.S. ("Background Note: India," U.S. Department of State, December 2005, Applicant's Document for Administrative Notice 10) I also take administrative notice of the 2000 annual report to Congress of the National Counterintelligence Center. The 2000 report identified India as one of seven countries active in pursuing aggressive economic information collection and industrial espionage against the United States. The report identified information targeted by the governments of the seven countries engaged in economic espionage. Three relevant targeted categories of information are U.S. Government programs, formulas and research, and pharmaceutical intellectual property. ⁽³⁾

I also take administrative notice of political and economic instability in the Russia Federation, conditions which raise security concerns for U.S. citizens visiting or residing there, and, by extension, for those U.S. citizens who have family members residing in the Russia Federation. A Consular Information Sheet on the Russia Federation, prepared by the U.S. Department of State and dated June 16, 2005, warned U.S. citizens traveling in the Russia Federation of the dangers of indiscriminate terrorist attacks and cautioned that travel to the Caucasus region is dangerous and should be avoided. (Government Document for Administrative Notice I at 5-6.) Tensions exist between the Russian military and the civilian government over resource allocation, restructuring, and reform. Russia's military arsenal remains vulnerable to theft or diversion, providing opportunities for those who would exploit weaknesses and leading to the conclusion that Russia's most immediate security threat is terrorism. ("Current and Projected National Security Threats to the United States," Testimony of the Director, Defense Intelligence Agency, 17 March 2005, Government Document IV for Administrative Notice, at 18-19. Congressional Research Service Brief for Congress, "Russia," updated May 24, 2005, Government Document V for Administrative Notice, at 11-12.)

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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *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.

CONCLUSIONS

Guideline B - Foreign Influence

In the amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's wife, whom he met over the internet, is a citizen of Russia currently living in the United States with him (§ 1.a.); that Applicant's parents-in-law are citizens and residents of Russia (§ 1.b.); that Applicant's stepson is a citizen and resident of Russia (§ 1.c.); that Applicant and his wife provide financial assistance to the stepson every year (§ 1.d.); that Applicant traveled to Russia in at least 1998, 2001, and 2004 (§ 1.e.); that Applicant's mother is a citizen and resident of India (§ 1.f.); and that Applicant's sister is a citizen and resident of India (§ 1.g.).

A Guideline B security concern exists when an applicant's immediate family, including cohabitants, and other persons to whom he or she might be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that India, while friendly to the U.S., has a history of economic espionage against the U.S. and has been a significant collector of proprietary information from U.S. government contractors. Even though India is not hostile to the U.S., it nevertheless could pose a threat to the security of the U.S. *See* ISCR Case No. 02-26976, at 4-5 (App. Bd. Oct. 22, 2004) Additionally, Applicant's case requires the recognition that the Russia Federation is politically and economically unstable, conditions that have been exploited by criminal and terrorist groups. Their actions threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of India or the Russian Federation could be vulnerable to coercion, exploitation, or pressure.

Applicant's admissions raise two possible Guideline B security concerns. Applicant's mother and sister are citizens and residents of India. His mother-in-law, father-in-law, and step-son are citizens and residents of the Russia Federation. The citizenship and residency of these immediate family members raise security concerns under E2.A2.1.2.1. of Guideline B. Additionally, Applicant's wife, with whom he shares his home, is a citizen of the Russia Federation. Applicant's wife is close to her parents and son, all of whom are citizens and residents of the Russia Federation. This raises a security concern under E2.A2.1.2.2. of Guideline B.

An applicant may mitigate foreign influence security concerns by demonstrating that 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 an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's mother and sister are agents of a foreign power, they are residents and citizens of India, and Applicant failed to demonstrate that, despite his fractious relationship with them, they could not be exploited by a foreign power in a way that could force him to choose between loyalty to them and to the U.S. Similarly, while the evidence does not show that Applicant's wife, father-in-law, mother-in-law, and step-son are agents of a foreign power, they are citizens of the Russia Federation. The Russia Federation has an uncertain political and economic future where groups engaged in criminal and terrorist activities are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that his wife, parents-in-law, and step-son could be exploited by these groups in a way that could force him to choose between loyalty to his wife and her family members resident in the Russia Federation and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun. 2, 2005)

Although he has been married to his wife since 2002, Applicant has never met her parents and her son, and he professes he has no interest in doing so, thereby suggesting that since he does not know them, they should not be a security concern in his case. Applicant's suggestion is not persuasive. Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1, DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 2005) Accordingly, C E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Over the years, because of intensely-felt differences of belief and opinion, Applicant's contacts and visits with his mother and sister in India have been infrequent. These strongly-felt differences have diminished communication and contact but reflect an intensely familial relationship that cannot be considered casual. Accordingly, MC E2.A2.1.3.3 does not apply to Applicant's relationship with his mother and sister.

Applicant has traveled to the Russia Federation three times since 1998. His wife visits her parents and son in the Russia Federation once a year. Applicant and his wife provide her son in the Russian Federation with support for his education. Applicant's wife is in frequent e-mail contact with her son, and she speaks with him and her parents by telephone once a month. She owns property in the Russia Federation jointly with her son, although she plans to transfer her interest in the jointly-owned property to her mother. These contacts and correspondence with Applicant's wife's family members in the Russia Federation are familial and frequent. Accordingly, MC E2.A2.1.3.3. is inapplicable to Applicant's relationship with his wife and her family members in the Russia Federation.

Nothing in Applicant's testimony suggested he was not a loyal U.S. citizen. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the allegations in subparagraphs 1.a. through 1.g. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to the allegations in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1d.: Against Applicant

Subparagraph 1e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

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.
3. 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, Appendix, at unnumbered pages 1-3, as prepared by the National Counterintelligence Center. Admitted as Government's Exhibit X for administrative notice.