

KEYWORD: Foreign Influence

DIGEST: Applicant is 35 years old, married and has two children. He is employed by a federal contractor as an optical engineer. Applicant's parents and brother are residents and citizens of India. Applicant's brother works for a government agency in India. Applicant maintains close ties with his family in India. Applicant failed to mitigate the security concerns raised by Guideline B, foreign influence. Clearance denied.

CASENO: 04-01881.h1

DATE: 04/25/2005

DATE: April 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01881

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 35 years old, married and has two children. He is employed by a federal contractor as an optical engineer. Applicant's parents and brother are residents and citizens of India. Applicant's brother works for a government agency in India. Applicant maintains close ties with his family in India. Applicant failed to mitigate the security concerns raised by Guideline B, foreign influence. Clearance denied.

STATEMENT OF CASE

On November 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence considerations.

In a sworn statement, dated December 20, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted all allegations contained in the SOR. Department Counsel submitted the government's case on January 14, 2005. A file of relevant material (FORM) was received by Applicant on January 25, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional information. The case was assigned to me on March 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 35 years old and has been employed since 2003, as an optical engineer for a federal contractor. Applicant was born in the United States. Applicant is a college graduate and earned a master's degree in 1998. Applicant is married and has two children.

Applicant's parents are citizens and residents of India. Applicant talks to his parents once a week via telephone to check on their well being. Applicant's brother is also a citizen and resident of India. Applicant's brother is employed by an Indian government agency, located in India, that does atomic research. Applicant speaks to his brother approximately once a month via telephone. Applicant's mother visited Applicant and his family in the United States in 2004. She stayed for approximately six months and then returned to India. The purpose of Applicant's mother's visit was to see her grandchildren.

The atomic research agency that Applicant's brother works for is one of the largest associated with the main government agency responsible for atomic energy.⁽²⁾ The primary objective of the agency is to conduct a "broad based multidisciplinary programme of scientific research and advanced Engineering, directed towards the development of sodium cooled Fast Breeder Reactor (FBR) technology, in India."⁽³⁾ Over the years, the agency has established comprehensive Research & Development facilities, and has developed a strong base in a variety of disciplines related to this advanced technology.⁽⁴⁾ The agency "utilizes its expertise and resources in enhancing its standing as a leading Centre of research in various branches of basic, applied and engineering sciences that have a bearing on Nuclear Technology...."⁽⁵⁾ The agency "has extended its expertise and facilities to other vital sectors as Defence, Space and other industries of India to develop techniques for reliable solutions to specialized problems."⁽⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and

surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B.

"India is the world's largest democratic republic."⁽¹⁶⁾ "The United States is one of India's largest trade partners."⁽¹⁷⁾ "India's size, population, and strategic location give it a prominent voice in international affairs, and its growing industrial base, military strength, and scientific and technical capacity on issues from trade to environmental protection. Although the government generally respected the human rights of its citizens, there remained numerous serious problems and significant human rights abuses."⁽¹⁸⁾

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*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*), and FI DC E2.A2.1.2.3. (*Relatives, cohabitants, or associates who are connected with any foreign government*) apply. Applicant's parents and brother are citizens and residents of India. Applicant's brother works for a foreign government agency. Applicant stays in close contact with his parents and his brother.

I have considered all the mitigating conditions and specifically considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*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 loyalty to the person(s) involved and the United States*), and FI MC E2.A2.1.3.2. (*Contacts and correspondence with foreign citizens are casual and infrequent*), and conclude they do not apply. No information was provided to show whether Applicant's parents have any ties or not with the government. No information was provided to show what Applicant's parents occupations are and whom they are employed by or any other information that might mitigate his ties with his family. Applicant maintains close contact with his parents and with his brother. The contacts are weekly and his relationship is close with his mother, as evidenced by her six month visit with Applicant and his family. Applicant's brother works for an atomic research agency and Applicant maintains regular contact with him. No other information was provided that might mitigate Applicant's ties with his brother.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into

consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant's parents and brother are Indian residents and citizens. With the limited information provided, the familial ties and contact Applicant has with his relatives, along with his brother's employment with a foreign government agency, creates a position of vulnerability for him. These facts raise reasonable doubts about Applicant's ability to protect classified information unfettered by concerns about family members who may be subject to the interests of a foreign government and thus, his suitability for access to classified information. Absent substantial information to resolve those doubts, which Applicant failed to provide, and considering the whole person, I find Applicant has failed to mitigate the security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

DECISION

In light of all 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Item 8.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

8. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

12. *Egan*, 484 U.S. at 531.

13. *Id.*

14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

15. Executive Order 10865 § 7.
16. U.S. Department of State: Consular Information Sheet, January 11, 2005.
17. U.S. Department of State: Background Note: India, November 2004, at 2.
18. U.S. Department of State: India, Country Reports on Human Rights Practices-2003, February 25, 2004.