

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is 63 years old and works in computer systems for a defense contractor. Applicant and his family applied for immigration status in 1975, and were granted permission to come to the U.S., from India, in 1992. They became naturalized citizens in 1999. Applicant had previously served in the Indian military and receives a minimal pension that is deposited in a bank in India. Applicant left India with four months notice and did not sell his house. The value of the house and pension is inconsequential compared to Applicant's total assets. Applicant's wife has eight siblings in India that they have minimal contact with. Applicant has successfully mitigated the security concerns under Guidelines C, foreign preference, and Guideline B, foreign influence. Clearance is granted.

CASENO: 04-05562.h1

DATE: 12/22/2005

DATE: December 22, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05562

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 63 years old and works in computer systems for a defense contractor. Applicant and his family applied for immigration status in 1975, and were granted permission to come to the U.S., from India, in 1992. They became naturalized citizens in 1999. Applicant had previously served in the Indian military and receives a minimal pension that is deposited in a bank in India. Applicant left India with four months notice and did not sell his house. The value of the house and pension is inconsequential compared to Applicant's total assets. Applicant's wife has eight siblings in India that they have minimal contact with. Applicant has successfully mitigated the security concerns under Guidelines C, foreign preference, and Guideline B, foreign influence. Clearance is granted.

### **STATEMENT OF CASE**

On June 22, 2005, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline C, foreign preference, and Guideline B, foreign influence.

In a sworn statement, dated July 8, 2005, Applicant responded to the SOR allegations, and requested a hearing. In his SOR response, Applicant admitted all the allegations in the SOR.

The case was assigned to me on September 9, 2005. A notice of hearing was issued on October 25, 2005, scheduling the hearing for November 21, 2005. The hearing was conducted as scheduled. The government submitted two exhibits that were marked as Government Exhibits (GE) 1-2. The exhibits were admitted into the record without objection. Administrative Notice was taken of four exhibits, without objection, and were marked as I-IV. Applicant testified on his behalf, four witnesses testified on his behalf, and one exhibit was submitted that was marked as Applicant's Exhibits (AE) A. The exhibits were admitted into the record without objection. The transcript was received on December 5, 2005.

## FINDINGS OF FACT

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

Applicant is 63 years old and has worked as a team leader certifying and accrediting computer systems for a defense contractor since 2003. Applicant is married and has two grown children, one of whom is in graduate school and the other married. Applicant and his family applied to immigrate to the United States in 1975, and were granted permission in 1992. With four months notice, Applicant, his wife, and children immigrated from India to the United States in 1992, and became naturalized citizens in 1999.

Applicant served from 1962 to 1984 in the Indian military. His speciality was communications, and then he moved into computer and systems analysis. Applicant turned down a promotion to Lieutenant Colonel to pursue civilian career opportunities, and retired as a Major from the Indian Army Signal Corps, under India's Ministry of Defense. Applicant's monthly military pension was originally approximately \$50.00. He estimates that with cost of living increases that it is now approximately \$150.00, but he does not know the amount. Applicant's military pension is deposited in a bank account he owns in India. At the time Applicant immigrated from India, there were foreign restrictions about taking Indian currency out of the country and there were no legal means to have the money transferred to an account in the United States. Applicant was forced to have the pension deposited in his Indian account. Applicant has not touched the account since he left in 1992. He has no idea how much money is in the account. He does not receive any bank statements nor has he checked on it.

Due to the short four month notice that Applicant and his family received granting them permission to immigrate, they had very little time to resolve their personal matters before departing. Applicant owned a house in India that is worth approximately \$3,000-\$5,000 today. He was unable to sell the house before leaving India due to the short period of time. The house has remained empty since his departure. Applicant anticipates returning to India after he retires to sell the house, and if he can, liquidate the bank account.

Applicant's wife runs her own real estate company and earns approximately \$70,000 annually. Applicant earns approximately \$85,000, and some years receives about a \$3,000 bonus. He and his wife have approximately \$800,000 in investments and saving. They own a home that is worth approximately \$500,000. Applicant has never been in debt, pays his bills on time, and lives within his means.

Applicant's parents are deceased and his only sibling is a citizen and resident of the United States. Applicant's wife's parents are deceased, but she has eight siblings who are citizens and residents of India. They all work in the private sector and do not work for the government. Applicant has not returned to India since immigrating. Applicant's wife has returned twice, once to attend her mother's memorial service, and the other time to attend a wedding. Applicant's wife has communicated with her family in India approximately five times by telephone in the past five years. Applicant does

not maintain any contact with anyone in India.

Supervisors and coworkers believe Applicant to be the consummate professional and perfectionist. He is totally devoted to his work and the mission. He is seen as an excellent team player and one who could always be trusted to get the job done well and on time. He is perceived as having a sharp mind and a kind spirit. Applicant's character is considered beyond reproach and he has an outstanding work ethic.

India is sovereign, socialist, secular, democratic republic.<sup>(2)</sup> The United States is India's largest investment partner.<sup>(3)</sup> There have been terrorist attacks in India, but their government is committed to combating terrorism and conducts counter-terrorist operations.<sup>(4)</sup> United States citizens have not been the targets of the terrorist attacks.<sup>(5)</sup> India generally respects the human rights of its citizens, however they do have human rights problems that remain, such as use of excessive force against insurgencies, and societal violence against women.<sup>(6)</sup>

## 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 C, foreign preference, and Guideline B, foreign influence considerations, with their respective DC and MC, apply 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.<sup>(7)</sup> The government has the burden of proving controverted facts.<sup>(8)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(9)</sup> 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.<sup>(10)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(11)</sup>

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

Guideline B-Foreign Influence is a concern because 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 C and Guideline B.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.3 (*Military service or a willingness to bear arms for a foreign country*), and FP DC E2.A3.1.2.4 (*Accepting educational, medical, or other*

benefits, such as retirement and social welfare, from a foreign country) apply. Applicant served 22 years in the Indian military and receives a monetary pension for his service.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.2 (*Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship*), applies. Applicant was in the Indian military and retired in 1984. He came to the United States in 1992, and became a citizen in 1999. Applicant's service was prior to swearing allegiance to the United States. By virtue of his military service, Applicant receives a small pension from India, however he does not have access to it and has not made any attempt to access it since he left the country 13 years ago. Applicant is financially solvent and does not depend on this money. To the contrary, it remains in an account that Applicant has never checked on, does not receive any statements on, and is a minimal amount when compared with Applicant's total financial worth. The Government alleged foreign preference concerns because of Applicant's ownership of a house in India. Applicant owns a home in India, that is of inconsequential value and does not have any effect on Applicant's citizenship preference. Applicant merely did not have time to sell it before having to depart for his new country of choice. I have also addressed this issue under the foreign influence guideline that raises issues regarding his financial interest in India. I find Applicant has successfully mitigated the security concerns regarding Guideline C, foreign preference.

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.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence*) apply. Applicant's wife has siblings that are citizens and residents of India. There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse.<sup>(16)</sup> An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters.<sup>(17)</sup> Applicant has a financial interest in India because he owns a house and has a bank account of unknown value there.

Both disqualifying conditions apply.

I have considered all the mitigating conditions and especially 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*), FI MC E2.A2.1.3.2. (*Contacts and correspondence with foreign citizens are casual and infrequent*), and FI MC E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*), and conclude they all apply. Applicant has no contact with his wife's siblings. His wife has been back to India twice in 13 years, once to attend the memorial service for her mother, and she has maintained minimal contact with her siblings in the last five years. Applicant has no contact with his in-laws or any one else in India. His wife's contacts are very limited. I find both qualify as "casual and infrequent" under FI MC E2.A2.1.3.2.

Applicant's in-law are not agents of a foreign power since they are not engaged in intelligence work and work in the private sector.<sup>(18)</sup> The question remains whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the in-laws vice the United States. The disqualifying

condition requires that a foreign power would exploit its citizens or residents in such a way as to have Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. India is a country with close economic ties with the United States and is equally committed to combating terrorism. There are terrorist activities and components in the country. However, India has no more incidents of terrorism or terrorist than other countries. I find Applicant's in-laws in India are no more vulnerable to exploitation by a foreign power than any other person in the country. FI MC E2.A2.1.3.1 applies.

Applicant does have financial interests in India. However, when balanced with his financial status in the United States, these interests are not substantial. Applicant has taken no interest in his property since leaving India. Although he is entitled to the very small pension he receives for his military service, he has let the payments accumulate in a bank account that has essentially remained dormant for the past 13 years. The value of his house in India is a very small portion of his total worth, to the point of being inconsequential. The total assets Applicant has in India are minimal and his lack of active participation in managing the assets reinforces this point. These assets are not sufficient to affect Applicant's potential security responsibilities. I find Applicant has successfully mitigated the security concerns under Guideline B. I did not make conclusions based upon piecemeal consideration of the available evidence.

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 the whole person and kept in mind that any doubt as to whether access to classified information must be resolved in favor of national security. Applicant has strong ties to his adopted country, his immediate family, his substantial personal assets, and his professional ties are all in the United States. Applicant and his wife's ties to family in India are not strong. His financial interests in India are minimal and inconsequential compared with his total worth. Balancing these potentially disqualifying and mitigating conditions and considering the totality of all the evidence, I conclude Applicant has mitigated the security concerns under Guidelines C and B, and it is clearly consistent with the national interest to grant Applicant a security clearance.

## **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 Preference (Guideline C) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Paragraph 2 Foreign Influence (Guideline B) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is granted.

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. U.S. Department of State Background Note: India, dated November 2004, at 4.
3. *Id.* at 7.
4. *Id.* at 8; U.S. Department of State, Consular Information Sheet, India, dated August 23, 2005.
5. *Id.*
6. U.S. Department of State, Country Reports on Human Rights Practices-2004, dated February 28, 2005, at 1.
7. ISCR Case No. 96-0277 (July 11, 1997) at 2.
8. ISCR Case No. 97-0016 (December 31, 1997) at 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 3-4; Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at 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. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).
17. Directive E2.A2.1.3.1.
18. *See*, 50 U.S.C. secs. 435, 438, and 1801 (b), *See also*, ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) for a broader definition of "agent of a foreign power."