

KEYWORD: Foreign Influence

DIGEST: Applicant mitigated security concerns raised by the presence in India of immediate family members and aunts who are citizen of that country. Clearance is granted.

CASENO: 04-07466.h1

DATE: 01/12/2006

DATE: January 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07466

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns raised by the presence in India of immediate family members and aunts who are citizens of that country. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 February 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision⁽¹⁾-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 4 March 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 July 2005. A hearing was originally scheduled for 29 September 2005, but was postponed due to Hurricane Rita. On 3 November 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 17 November 2005.

FINDINGS OF FACT

Applicant is a 37-year-old aeronautical engineer for a defense contractor. She was born and raised in India. She came to the U.S. in October 1990 and became a U.S. citizen in June 1997. Tr. 25. Her supervisors and coworkers consider her to be a dedicated, reliable, and trustworthy employee. See attachments to Answer.

Applicant's mother and father are citizen residents of India. They live in the most southwestern state of India. He owned

a stationery store, but is now retired. Tr. 15. He receives income from agriculture on lands he owns. Tr. 16. Applicant talks to her parents via telephone every two weeks. They have been to the U.S. to visit Applicant, the last time in May 2004. Tr. 17.

Applicant has four brothers and one sister, all citizen residents of India. Tr. 20. Applicant talks to them via telephone once a month, and sometimes by email. She also has five aunts who are citizen residents of India. She does not talk to them via telephone, but does visit them when she travels to India. Tr. 21. Only one of her siblings has visited the U.S. Tr. 24. He earned a degree at a U.S. university, majoring in petroleum engineering.

One of Applicant's brothers is a quality supervisor at an ammunition factory that she believes is affiliated with the Indian government. Tr. 23-24.

Applicant's husband is an aerospace engineer with the same defense contractor. His family is from India, but none of his immediate family live there now. Tr. 19-20. Applicant's mother-in-law died in 1996, after living in the U.S. for more than 30 years. Applicant has visited India at least five times since 1993. She, her husband, and two children last visited India in May 2005 for five weeks. Tr. 17. Applicant reported all of her foreign travel, as required.

Applicant had a small bank account in India that she used to facilitate her travel to India. She closed the account because of the possible security concerns it raised. Tr. 22. She does not own any property in India.

"According to its Constitution, India is a 'sovereign, socialist, secular, democratic republic,'" "patterned after the British parliamentary system." Ex. 3 at 4. India remains a leader of the developing world and the non-aligned nations. Ex. 3 at 8. Violent crime against U.S. citizens is relatively rare, but the U.S. Department of State recommends U.S. citizens avoid two of the most northern states because of terrorist activities. Ex. 4 at 3, 6. The Government generally respected the human rights of its citizens, although numerous serious problems have been noted. Ex. 5 at 1.

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 authorized the Secretary of Defense or his designee to grant

applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant's father (¶ 1.a), mother (¶ 1.b), mother-in-law (¶ 1.c), five siblings (¶ 1.d), and aunts (¶ 1.e) are citizen residents of India; she has a bank account in India (¶ 1.f); she traveled to India at least four times since December 2003 (¶ 1.g); one of her brothers works for the Indian government at a ammunition factory (¶ 1.h). Applicant admits each of the allegations, except ¶ 1.c-her mother-in-law is deceased.

A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline B. Members of Applicant's immediate family-her father, mother, and siblings are citizen residents of a foreign power-and persons to whom she has close ties of affection or at least obligation-her five aunts-are citizen residents of India. DC E2.A2.1.2.1. And one of her brothers may be connected with a foreign government by virtue of his working for an ammunition plant Applicant believes is affiliated in some way with the Indian government. DC E2.A2.1.2.3.

Applicants are responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." Directive ¶ E3.1.15.

An applicant may mitigate foreign influence security concerns in several ways. Potentially mitigating conditions in Applicant's case include the following: Her immediate family members and foreign associates are neither "agents of a foreign power" nor in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the family member or associate and loyalty to the U.S. (MC E2.A2.1.3.1); Applicant has promptly reported to proper authorities all of her contacts with a foreign country (MC E2.A2.1.3.4); and she has no foreign financial interests (MC E2.A2.1.3.5).

In weighing the evidence, an administrative judge must evaluate an applicant's security eligibility in terms of the totality of her conduct and circumstances under the whole person concept. A piecemeal analysis is inconsistent with the whole person analysis. ISCR Case No. 02-09907, 2004 DOHA LEXIS 642 (App. Bd. Mar. 17, 2004); *but see* ISCR Case No. 02-31154 (App. Bd. Sep. 22, 2005) (evaluating each fact individually and concluding the administrative judge erred because the individual fact alone was not determinative).

In assessing whether a foreign associate is in a position to be exploited by a foreign power, it is helpful to consider several factors. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. *See* ISCR Case No. 02-24254, 2004 DOHA LEXIS 703 at *17 (App. Bd. Jun. 29, 2004) (distinguishing ISCR Case No. 98-0419 (App. Bd. Apr. 30, 1999) and suggesting it was appropriate for the administrative judge to consider that the foreign country involved had a friendly relationship with the United States, is not an authoritarian regime, and is not on the U.S. list of countries sponsoring terrorism); *but see* ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005) (claiming "nothing in Guideline B indicates or suggests that it is limited to countries that are hostile to the U.S.").

After considering all of the evidence, under the totality of circumstances, I conclude MC E2.A2.1.2.1 applies. The evidence of record supports a conclusion that Applicant's immediate family members and aunts who are citizen residents of India are not agents of a foreign power. *See* 50 U.S.C. § 1801(b). In evaluating whether Applicant's foreign associates are in a position to be exploited by a foreign power, I fully considered the facts that there is terrorism in northern India and her brother is employed by a government affiliated ammunition plant. But her family members live far to the south of any terrorism, and Applicant's brother is not in a position which would create a heightened risk of foreign exploitation. He is not involved in a political or policy-making job, nor engaged in the type of high-tech work that would attract espionage interest.

I also conclude Applicant reported her foreign travels and contacts with foreign citizens, as required. MC E2.A2.1.3.4 applies. Applicant and her husband have no financial interests overseas. MC E2.A2.1.3.5 applies.

Determining suitability for a security clearance requires a predictive judgment-it is an attempt to determine who might pose a security risk at some future time, based on certain established guidelines. After carefully considering all of the evidence, including the exhibits presented by the Government concerning India, the disqualifying and mitigation conditions, as well as the adjudicative process factors, I am convinced Applicant does not pose a security risk.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the

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

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

DECISION

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

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).