

DATE: May 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09130

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a U.S. Merchant Marine Officer, who received an Expeditionary Award for his service during Desert Storm. His wife and two children lived with the Applicant in the U.S.; but they returned to India, so that his wife could apply for permanent residency status. Her status was approved in June of 2004, and she will soon formally immigrate to the U.S. with their two U.S. born children. The Applicant's mother, a housewife in her 80s, will remain in Applicant's \$20,000 apartment in India. He sends his mother between \$2,000~\$4,000 each year to cover her medical expenses. His net worth in the U.S. is nearly \$50,000. The Applicant has seven siblings living in India. He has little contact with them, except for one sister, who is a travel agent. They are not connected to any foreign government. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On September 20, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about October 12, 2004.

The case was received by the undersigned on January 3, 2005. A notice of hearing was initially issued on January 18, 2005, and again on February 14, 2005, but the Applicant was deployed at sea and unable to be served. A third notice of hearing was issued on April 4, 2005, and the case was heard on May 5, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on May 13, 2005. The issue raised here is whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 47 years, and is employed by a defense contractor, who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant, who was born in India, became a naturalized U.S. citizen in 2001 (Government Exhibit (GX) 1 at page 1). He is a U.S. Merchant Marine Officer, and received an Expeditionary Award for his service during Desert Shield and Desert Storm (TR at page 34 line 10 to page 35 line 13, and Applicant's Exhibits (AppXs) F and G).

1.a. and 1.b. The Applicant's wife and two children lived with the Applicant in the U.S.; but they returned to India, so that his wife could apply for permanent residency status (TR at page 18 line 15 to page 19 line 20, at page 20 line 13 to page 22 line 2, and at page 39 lines 3~16). Her status was approved in June of 2004, and she will soon formally immigrate to the U.S. with their two U.S. born children, who are four and six years of age (*Id.*, and AppX A).

1.c., 1.f. and 1.g. The Applicant's Indian mother, a housewife in her mid-eighties, lives in Applicant's \$20,000 apartment in India (TR at page 23 line 10 to page 24 line 8, at page 32 lines 7~15, at page 39 lines 17~25, and at page 41 lines 3~14). He sends his mother between \$2,000~\$4,000 each year to cover her medical expenses, as she is in poor health (TR at page 28 line 14 to page 29 line 10, and at page 40 lines 15~23). His net worth in the U.S. is nearly \$50,000 (AppXs B and C).

1.d. and 1.f. The Applicant has seven siblings, who are citizens of and reside in India (GX 1 at pages 4~6). His brother "S . . ." is a foreman with a private electrical supply and transport company (TR at page 24 line 16 to page 25 line 25). He has not seen or called this brother in at least 10 years (*Id.*). His brother "D . . ." is also a foreman with the same electrical supply and transport company (TR at page 26 lines 7~17). He has not contacted this brother in seven or eight years (*Id.*). His sister "V . . ." is a housewife (TR at page 26 line 18 to page 27 line 6). The Applicant last contacted this sister in 2004 (*Id.*). His sister "J . . ." is a travel agent (TR at page 29 line 11 to page 30 line 6). He has contacted her frequently, as she is his travel agent for trips to India (tr at page 29 line 11 to page 30 line 6). His oldest brother "V . . ." has a tailor shop in India (TR at page 42 line 12 to page 43 line 11). The Applicant last contacted this brother 7 or 8 years ago (*Id.*). His sister "S . . ." is also a housewife (TR at page 43 line 14 to page 44 line 1). The Applicant last contacted this sister 3 or 4 years ago (*Id.*). Finally, his sister "Su . . ." is a housewife (TR at page 44 lines 5~20). The Applicant last contacted this sister about 3 years ago (*Id.*).

The Applicant has given these siblings a total of between \$1,000~\$2,000 over the years, by way of presents (TR at page 28 line 14 to page 29 line 10). All they know about the Applicant is that he works for the U.S. Merchant Marine; and if he were ever approached by anyone using coercion to get secrets, he would report this through security channels (TR at page 37 line 15 to page 38 line 18).

1.e. The Applicant visits his family in India about twice a year, but once his wife and children immigrate to the U.S., he intends few future visits (TR at page 30 line 7 to page 32 line 6, and at page 40 lines 8~14).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.

- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant is a U.S. Merchant Marine Officer who served honorably during operations Desert Shield and Desert Storm. He was officially recognized for that service.

The Applicant's wife, mother and siblings are citizens of and currently reside in India. The wife, however, will soon join him with his American children in the U.S. His mother, who is in her eighties, is a housewife. Except for his one sister who is a travel agent, the Applicant has little contact with his other six siblings. Although the second disqualifying condition under Foreign Influence is clearly applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country," none of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in India can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigation condition is therefore applicable as "the 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 the individual to choose between loyalty to the persons involved and the United States."

The Applicant has some financial interests in India, a \$20,000 apartment which is arguably "substantial," the last disqualifying condition is therefore applicable; but in light of the Applicant's \$50,000 net worth in the U.S., I find it is "not sufficient to affect the individual's security responsibilities." The last mitigation condition is also applicable. Furthermore, he plans few further trips to the country of his birth. Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge