



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-04278

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro Se*

January 17, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on July 12, 2006. On August 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 27, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on October 18, 2007. DOHA issued a notice of hearing on November 14, 2007, and I convened the hearing as scheduled on November 26, 2007. The government offered Exhibits (Ex.) 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through P, without objection. DOHA received the transcript of

the hearing (Tr.) on December 5, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. (Tr. at 10-12.) The request and the attached documents were admitted into evidence as Exhibit 5. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated August 27, 2007, Applicant admitted all of the factual allegations in the SOR. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 64 years old and was born in India in 1943. He moved to the United States in 1969 to pursue a higher education, and he remained because of the excellent opportunities he saw here. He became a naturalized United States citizen in 1986. Applicant received a Masters of Science degree in Electrical Engineering from a United States university in 1971.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He previously was employed by another defense contractor from 1974 through 2004, when he retired. He retained a security clearance during the period that he worked for this employer. During his career of 35 years working in the aerospace industry, Applicant has published 63 papers and obtained 16 United States patents.

For the last 35 years, Applicant has been married to an Indian born, United States citizen, and they have three children, who were all born in the United States, and are U.S. citizens. His two sons are medical doctors and his daughter is attending a U.S. university. Applicant and his wife also have one grandson, who is a United States resident and citizen. Applicant also has one sister who is a U.S. citizen and resides here.

Applicant has a number of relatives that reside in India and are Indian citizens. Applicant's father-in-law was a member of the Parliament of India for two and one half years, but he is approximately 86 years old, and he has been retired for many years. He now does social and charitable work, often using his own assets, as he is quite wealthy. Applicant has very little contact with him.

Applicant has three brothers, two who lived in India their entire lives and are Indian citizens, and one who lived in the United States for 35 years and is a U.S. citizen, but has moved back to India.

His oldest brother was the CEO of the State Bank of India. He is 87 year old and has been retired for 28 years. His second brother is 77 years old, and long retired. Applicant communicates with both of them approximately every three or four months. His third brother moved back to India after he retired, because his limited financial resources would go further in India than in the United States.

Finally Applicant's wife has nine siblings. All four sisters and one brother are citizens and residents of the United States. The other four brothers are citizens and residents of India, but none of them are employed by the Indian Government. Applicant's contact with them is extremely limited.

Applicant maintains a bank account in India with an approximate value of \$2,000. He also has purchased a condominium in India, which is in the process of being built, worth approximately \$164,000. He has traveled to India during the years 2000, 2001, 2005, 2006, and he testified that he planned to go again to India shortly after the hearing date.

Applicant testified that he had two primary reasons for visiting India as often as he has. First, he visited his elderly and ailing mother, who passed away in 2006. The second reason for his trips to India, was to receive a unique and beneficial treatment for his debilitating arthritis, which was only available in India or China. This treatment required multiple trips for treatment. He testified that he purchased the condominium so that he could stay there after his treatments, and he kept the bank account in India to make the payments on the condominium.

Applicant testified that he has been successful financially in the United States, and he offered documents into evidence to show that he had a net worth of approximately \$4.6 million (Exhibits G, H). He also offered into evidence letters from individuals who know or have known him: in his professional life (Exhibits A-E), those that know him in his personal life (Exhibits I-K), and from his son (Exhibit F). They spoke in extremely laudatory terms of his high integrity, honor and devotion to the United States. Additionally, Applicant testified that he has been made a fellow of the Institute of Electrical and Electronics Engineers, an extremely prestigious organization. Finally, he testified about some of the activities in the community which he has been involved, including the organizing of health fairs for which he has received Certificates of Congressional Recognition (Exhibits L, M).

I take administrative notice of the following facts regarding India. According to its constitution, India is a "sovereign, socialist secular democratic republic." It is a multiparty, federal parliamentary democracy and has a population of approximately 1.1 billion people. The United States recognizes India as a key to interests of the U.S., and it has sought to strengthen its relationship with India. However differences do remain

between the two countries, including the concern of the U.S. over India's nuclear weapons program, its abuses of human rights, and its continued, increasing cooperation with Iran. Finally, India has been identified as one of the most active collectors of sensitive U.S. economic and proprietary information.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying (DC). Those that could be applicable in this case include the following: (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation. Applicant's relatives, including his sister, brothers, father-in-law and brothers-in-law, who are citizens and residents of India, make DC (a) and (b) a concern to the Government. The bank account and the ownership of the condominium, both in India, apply to DC (e).

AG ¶ 8 provides conditions that could mitigate security concerns (MC):

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the

interests of the U.S.; (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I find that MC (b) is applicable to this Applicant and strongly controlling for the following reasons: Applicant, who is 64 years old, has lived in the United States for 38 years and been a U.S. citizen for 21 years. He is married to a U.S. citizen and his three children and one grandchild are all U.S. citizens and residents. He has worked in the aerospace industry for 35 years and held a security clearance for most of that time with no known infractions. He has been successful in this country and been able to accumulate net wealth of \$4.6 million. He has received many positive and laudatory letters of recommendation from individuals that have known him in different capacities over many years. While he has traveled to India a number of times to visit his ill mother, who is now deceased, and to receive medical care unique to India, his attachment to the United States is overwhelmingly greater than that to India. The value of the property that he owns in India is insignificant compared to his U.S. holdings.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why MC (b) applies, I also find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the security concerns.

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, 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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge