



**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. 07-05902

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel

For Applicant: *pro se*

Decision

HENRY, Mary E., Administrative Judge:

Based on a review of the case file, pleadings and exhibits, Applicant has mitigated the government's security concerns under guidelines B and C. His eligibility for a security clearance is granted.

Case History

Applicant submitted his Security Clearance Application (SF 86), on November 10, 2006. On July 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 acknowledged receipt of the SOR on August 1, 2007. He submitted a notarized, written response to the SOR allegations on August 16, 2007, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant with a complete copy on October 1, 2007. Applicant received the FORM on October 15, 2007. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. DOHA assigned this case to me on December 13, 2007. The government submitted seven exhibits, which have been marked as Gov X 1-7 and admitted into the record.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India in this case. The request and the attached documents have not been admitted into evidence, but are included in the record. The facts administratively noticed are set out in the Findings of Fact below.

Findings of Fact

In his August 16, 2007 Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a of the SOR, with explanation. He also admitted the remaining factual allegations in ¶¶ 1.b and 2.a through 2.g of the SOR. He provided additional information to support his request for eligibility for a security clearance in his responses to Interrogatories and personal interview.¹

Applicant, who is 39 years old, started working for a Department of Defense contractor as a senior software architect in August 2006. He completed his undergraduate engineering degree in India, where he was born and educated.²

From 1988 to 1992, Applicant work as an engineer for a power company controlled by the Indian government. He has no continuing contact with the company or its employees. He moved to the United States (U.S.) in August 1992 to attend graduate school at a major U.S. university. He received a Masters of Mechanical Engineering in December 1995 and a Masters of Science degree in September 1996. He remained in the U.S., working as a software engineer for several companies before obtaining his current position.³

¹Gov X 3 (Response to SOR).

²Gov X 4 (SF-86) at 6, 10.

³*Id.* at 11-18, 35; Gov X 5, (Interrogatory attachment - personal interview).

Applicant married in April 1995. His wife, who was born in India, became a U.S. citizen in January 1995. They have two children, ages 10 and 8, who were born in the U.S. His wife and children reside with him in the U.S.⁴

Applicant's parents, ages 72 and 68, reside in India, where they were born. His father is a retired university professor and his mother a housewife. Both are citizens of India. His brother and sister reside in India, where they were born. They are citizens of India. His brother works for a U.S. company in India and his sister works as an electronics communications engineer in a scientific laboratory for the Indian government.⁵

Applicant's father-in-law and mother-in-law, who were born in India, are naturalized U.S. citizens and reside in the U.S. His sister-in-law, who was born in India, lives in the U.S. and is a resident alien, working in the U.S. for a U.S. company.⁶

Since arriving in the U.S., Applicant has traveled to India six times to visit with his parents and siblings. He talks with his parents regularly by telephone and with his siblings approximately once a month. During this same time, he traveled once to Canada on a family trip and once to Ireland on a business trip.⁷

Applicant became a U.S. citizen in March 2005 and obtained a U.S. passport shortly thereafter. His Indian passport is no longer valid. In May 2005, he acquired a "Person of Indian Origin" card. India provides this card to former citizens and individuals whose father or grandfather are or were citizens of India. This card allows Applicant to travel to India without applying for the entry visa India requires all visitors to have before entering the country. Applicant has offered to give this card to his security office to hold until he needs it for travel. He would provide the security office with details of his trip and a contact number while in India before requesting the card. He would return the card upon his return to the U.S. He will not invalidate the card as it makes his travel preparations for India easier, which can be important if he must travel quickly. He must still use his U.S. passport when traveling to India. If his visit is less than 180 days, as a card holder, he need not register when he arrives. The card provides no citizenship benefits to him, particularly political rights and voting rights, but allows him to act in the same manner as other visitors. Since becoming a U.S. citizen, he has not participated in the Indian political process.⁸

⁴*Id.* at 19-21, 24, 25.

⁵*Id.* at 23-26; Gov X 5, *supra* note 3, personal interview.

⁶Gov X 4, *supra* note 2, at 26-30; Gov X 5, *supra* note 3, personal interview.

⁷Gov X 5, *supra* note 3, personal interview.

⁸Gov X 3, *supra* note 1, at 1; Gov X 4, *supra* note 2, at 7; Gov E 5, *supra* note 3, at 2, 5-6, personal interview; Gov X 7 (Ministry of Home Affairs, Government of India, Overseas Citizenship of India (OCI)) at 2, 4-5; Department of State, Consular Information Sheet, dated August 9, 2007.

In July 2005, Applicant opened a non-repatriable account (NRE) at a bank in India for the sole purpose of providing his parents with money to pay emergency expenses because he has a family responsibility to help his parents. He deposited \$1,000 in U.S. dollars in the account, which the Indian bank converted into Indian currency. Only U.S. dollars can be deposited in the account. Once the money is converted into Indian currency, it cannot be converted back into U.S. dollars. The maximum amount of money in the account has been \$2,000. In the last year, the account earned approximately \$20 in interest. Applicant does not provide his parents with monthly income. His parents own their home and his father receives a monthly pension. His sister lives with his parents and provides financial assistance to them.⁹

Applicant loaned his brother \$15,000 to purchase a condominium in India. The record does not contain any evidence which reflects that Applicant retains an ownership interest in his brother's condominium. Applicant does own property and other assets in the U.S., which have an estimated value of \$630,000.¹⁰

Applicant has never served in the Indian or U.S. military. His finances are stable and solid. He does not have a criminal record nor is there evidence of alcohol and drug abuse by him. The record does not contain any information which indicates that his family members in India are political activists or involved in any type of criminal activity.

I take administrative notice of the following facts. India is the largest democratic country in the world. Like the U.S., India is committed to political freedom protected by a representative government. The U.S. and India share a common interest in the free flow of commerce and resources, in fighting terrorism and in creating a strategically stable Asia. Although the two countries differed over India's nuclear weapons program and the pace of economic reforms in India, the U.S. views India as a growing world power with which it shares common strategic interests. Because of their strong partnership, the U.S. and India enjoy a very active working relationship on many issues, including terrorism, space, and nuclear weapons. The U.S. has authorized the sales of certain arms to India. India is a collector of economic information and maintains a positive relations with Iran. The government of India generally respects the rights of its citizens, although some serious human rights problems remain. The Indian government does not support or sponsor terrorism or terrorist organizations, but some acts of terrorism have occurred within India.

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

⁹Gov X 5, *supra* note 3, Answer to Question 15 and personal interview.

¹⁰Gov X 5, *supra* note 3, Answer to Question 16 and personal interview.

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©, 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 C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and,

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

The Indian government requires all persons visiting India to obtain a visitor's visa. For former Indian citizens seeking to visit India, the government of India developed the

Person of Indian Origin card which allows the former citizens to bypass the lengthy process of obtaining a visa before entering the country. With this card, former citizens are not required to register their visit when they arrive in India, unless they stay more than 180 days. The card simplifies the visiting process for former citizens.

Applicant obtained this card for the sole purpose of making his preparation for trips to India easier, especially if he had to return quickly. The card gives him no rights of citizenship, although it allows him to participate in activities in which other visitors would engage. He uses his U.S. passport to travel to and from India, as this is his only passport. The card does not show that Applicant has a preference for India. None of the Guideline C disqualifying conditions are raised. Guideline C is found in favor of Applicant.

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:

(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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(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;

(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;

(f) failure to report, when required, association with a foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and,

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's parents and two siblings are citizens of India and continue to reside in India. He visits with them periodically and talks with all of them on a regular basis. He obtained a Person of Indian Origin card to make his entry into India easier when he visits. He has established a small bank account to assist his parents with financial emergencies. His continual and ongoing contacts with his immediate family members may raise security concerns under the disqualifying conditions identified in AG ¶¶ 7(a) and (7)(b).

Applicant lives with his wife and two young children in the U.S. All are U.S. citizens. Because these family members are in the U.S., he is not at a heightened risk of foreign inducement, manipulation, pressure or coercion. Likewise, because his wife's parents are citizens and residents of the U.S. and his sister-in-law works and resides in the U.S. with her closest family members, Applicant's marriage has not placed him in a position of a heightened risk. Thus, AG ¶ 7(d) is not raised.

For a security concern to be raised under AG ¶ 7(e), Applicant must have a substantial business, financial or property interest in India or an Indian owned or operated business. He does not. He loaned his brother money to buy a condo in India. He did not buy his brother the condo, thus, Applicant has no ownership in this property. His financial interest is limited to the amount of the loan, and will reduce as the loan is repaid. The bank account he created for his parents contains a very small amount of money. The account has been established in such a way that it limits how deposits are made, requires the conversion of deposits into Indian currency, and prevents the conversion of Indian currency to U.S. dollars. Applicant's financial transactions in India do not indicate a substantial business or financial interest in India. His minimal actions

and occasional financial support for his family do not raise a security concern, particularly since his financial and property interests in the U.S. are substantial. This disqualifying condition is not raised.

Applicant worked for a power company operated by the Indian government over 15 years ago. Since his departure from this job and his immigration to the U.S., he has not had a business relationship with the company or its employees. He does not have any regular contact with the company or any of its employees. A security concern is not raised by this long ago employment.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

India is a strong ally of the U.S. It is a democracy with a representative form of government. India and the U.S. share many common interests. The countries, however, disagree on certain issues. Currently, the U.S. and India are engaging in dialogue on these issues, which has resulted in important steps towards a resolution of their differences. Because both countries are democratic countries, their representatives understand the value of talking and working towards mutual agreement from different points of view. This approach to problem solving fosters mutual respect and trust, which

reduces the likelihood of pressure or coercion from a foreign government on the Applicant. The Applicant's parents and siblings are not involved in politics. His parents and brother do not work for the Indian government. His sister's employment with the Indian government is not likely to place him in a position of having to choose between the interests of the U.S. government and India, in part because of the strong relationship between the U.S. and India. Given his family's lack of political involvement and criminal activity, it is unlikely that Applicant will be placed in a position to choose between the interests of his family and the U.S. government as provided in AG ¶ 8(a).

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. Applicant was born and raised in a democracy. He chose to immigrate to the U.S., the birthplace of democracy. He continues to hold dear the principles and freedoms found in a democracy. As is natural in all human beings, he still maintains ties with his parents and siblings. He feels a responsibility to make a small amount of money available to his parents for emergencies. He does not provide them with regular financial support because they have a retirement income and receive financial support from his sister. His family members are self-sufficient and not in need of financial support from him. He has never been arrested or convicted of any criminal charges. He has worked and studied hard. He is a responsible family man and citizen of the U.S. It is unlikely that his continued contacts with his immediate family members in India will create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion by the Indian government because India is a democracy and a strong friend of the U.S. Applicant has mitigated the government's security concerns.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under Guidelines B and C.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	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.

Mary E. Henry
Administrative Judge