



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



In the matter of:)	
)	
)	ISCR Case No. 07-12922
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel	
For Applicant:	, Personal Representative

June 27, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by his foreign family members. Eligibility for access to classified information is granted.

On January 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline B, Foreign Influence. 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 answered the SOR in writing on March 5, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on April 8, 2008. DOHA issued a Notice of Hearing on April 18, 2008, and I convened the hearing as scheduled on May 29, 2008. The record closed on June 13, 2008. DOHA received the transcript of the hearing (Tr.) on June 11, 2008.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as HE I through XIV. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The Government offered Exhibits (GE) 1 and 2, which were received without objection. Applicant testified on his own behalf, called one witness, and submitted Exhibits (AE) A and B, which were received without objection. I granted Applicant's request to keep the record open until June 13, 2008, to submit additional matters. Applicant submitted 41 pages of documents marked as AE C through J. AE C, and E through J were admitted without objection. Department Counsel objected to AE D, a letter by Applicant dated June 12, 2008, on the basis that the letter contained additional information that was testimonial in nature. The objection to AE D is overruled and it is admitted. Department Counsel's memo is HE XV.

Findings of Fact

Applicant is a 26-year-old engineer for a defense contractor. He was born in the United States. He is a college graduate from an Indian university. He is single with no children.¹

Applicant's parents are citizens and residents of India. His maternal grandfather immigrated to the United States and became a U.S. citizen. His parents were visiting his grandfather in the U.S. when Applicant was born prematurely. They returned with him to India when he was very young. He attended school in India. It was his intent from an early age to eventually return to America to live. He returned to the United States in July 2005, after he graduated from college.²

Applicant's mother does not work outside the home. He contacts his mother by e-mail about once a week. He also speaks with her periodically on the telephone. Applicant has not returned to India since he left in 2005. He saw his mother in 2006, when she came to the United States for a family member's wedding. His father works for an Indian government agency. He is the head of a department. Applicant is not totally certain what his father does, but he believes it has to do with checking machinery and equipment. He believes his father has about 12 people working under him. His father served many years in the Indian military and retired as a senior officer. He receives a government pension based upon his military service. He is in his late 50s

¹ Tr. at 34-35, 52; GE 1, 2.

² Tr. at 35-39, 42; Applicant's response to SOR; GE 1, 2.

and will retire when he turns 60. Applicant had limited contact with his father while he was growing up because his father was stationed in an area that was distant from where Applicant and the rest of the family lived. He is much closer to his mother than his father. His father has never visited him in the United States. His contact with his father is mostly limited to when Applicant is contacting his mother.³

Applicant's younger brother is also a citizen and resident of India. He is in college pursuing a master's degree. Applicant has very limited contact with his brother. He has not seen his brother since he left India in 2005. The last time he spoke to him was about six months ago, to wish him a happy birthday. Applicant would eventually like to sponsor his parents and brother to immigrate to the U.S. He does not provide any financial support to his family in India.⁴

Applicant lived with his grandfather when he came to the U.S. He currently rents an apartment as his grandfather has a full house. He plans on moving back in his grandfather's house next year after another family member moves out. He is involved in his community. He is a volunteer Emergency Medical Technician (EMT) for his local fire and rescue department. He has volunteered 350 hours in the last seven months. He has no foreign assets. He is saving for the future and to be financially capable of sponsoring his family. He has assets of about \$65,000 to \$70,000 in the United States.⁵

Almost all of Applicant's family on his mother's side are in the U.S. His maternal grandparents, two uncles, and an aunt are all U.S. citizens and residents. He also has numerous cousins that are U.S. citizens. They all live in the same geographic location as Applicant, except for one cousin who lives in another state. His grandfather was born in India. He started working for the U.S. Government as a young man. He spent more than 40 years working for the U.S. Government, in India, in the United States, and in other foreign countries. His son, Applicant's uncle, has worked for the U.S. Government for more than 20 years.⁶

Two of Applicant's supervisors wrote character letters on his behalf. Both individuals have decades of experience in the military, as defense contractors, and hold clearances. Applicant is described as "a proud, patriotic citizen who is unequivocal in his support of our nation." He has displayed integrity and is trustworthy, dedicated, and conscientious. They recommend him for a security clearance. His grandfather testified that Applicant is a loyal U.S. citizen, who is stable and truthful, and would "not lie under any circumstances."⁷

³ Tr. at 53-70; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 70-76, 86-87; Applicant's response to SOR; GE 1, 2.

⁵ Tr. at 43-44, 82-85, 96.

⁶ Tr. at 87-89; Applicant's response to SOR.

⁷ Tr. at 99-100; AE A, B.

India

According to its constitution, India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion.

The Indian government generally respects the rights of its citizens, but numerous serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. A number of violent attacks have been committed in recent years by separatist and terrorist groups.

The U.S. recognizes India as key to strategic interests and has sought to strengthen its relationship with India. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist. There are also concerns about India's relations with Iran, including their increasing cooperation with the Iranian military.

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology, and acquisition of sensitive U.S. technology by foreign private entities does not slow its flow to foreign governments or its use in military applications.

The U.S. views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue to address differences and shape a dynamic and collaborative future. The U.S. and India are seeking to elevate the strategic partnership further to include cooperation in counter-terrorism, defense cooperation, education, and joint democracy promotion.

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 to be used 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, Administrative Judges apply the guidelines 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 the 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 adverse 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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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; and

(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.

Applicant's parents and brother are citizens and residents of India. His father works for an Indian government agency. India is the world's largest democracy, works closely with the U.S. on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have some human rights issues, has been victimized by terrorist attacks, and restricted, dual use technology has been illegally exported to India. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8:

(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.

Applicant was born in the United States, but was raised in India. He came to the U.S. in 2005, after he graduated from college. He obtained a good job, where he is respected and highly regarded. He lived with his grandfather, who is a U.S. citizen and has worked for the U.S. Government for decades. He is obviously very close to his grandfather and greatly admires him. Virtually all of his mother's side of the family are U.S. citizens and residents. His parents and brother are still in India and his father works for the Indian government. India is a democracy and strategic partner of the United States. Technology has been illegally exported to India, but the Hearing Exhibits provided by Counsel do not show that coercion was utilized. I find that it is not likely Applicant will be placed in a position of having to choose between the interests of the Indian government or his family members in India and the interests of the United States. I further find there is minimal conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are partially applicable. No other mitigating condition is applicable.

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) the 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 common sense 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 is an American citizen by birth. While he was raised in India, it is clear that the United States was always where he wanted to be. He returned to the U.S. in 2005, after he graduated from college. He is very highly regarded at work. He is committed to his community, volunteering many hours as an EMT. He diligently saved to be financially secure and to be able to sponsor his parents and brother to immigrate to the United States.

I considered the totality of Applicant's family ties to India. There is a strong partnership between the U.S. and India and they share common strategic interests. However, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁸ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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. Also very important is whether the foreign country is associated with a risk of terrorism.

India is a democracy that generally respects the rights of its citizens, but numerous serious problems remain. Like almost every country, including the United States, it has been victimized by terrorist acts. Restricted, dual use technology has been illegally exported to India, but there is no indication that India utilizes coercion against its citizens for espionage purposes. Many of our allies conduct intelligence gathering against the U.S. India would be jeopardizing its relationship with the U.S. by raising the stakes, and attempting to use duress against one of its citizens in an attempt to coerce a U.S. citizen to commit espionage. Applicant's position, assets, and ties in the U.S. make economic coercion through his parents and brother extremely unlikely to happen. In the very unlikely event that a conflict arose, I am convinced that because of Applicant's strong ties to the United States, that he would resolve any conflict of interest in favor of the U.S.

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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 has mitigated the Foreign Influence 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

Conclusion

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

Edward W. Loughran
Administrative Judge