



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



In the matter of:)
)
) ISCR Case No. 07-15222
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

April 22, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

On December 19, 2007, 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 January 18, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on March 3, 2008. DOHA issued a Notice of Hearing on March 14, 2008, and I convened the hearing as scheduled on April 8, 2008. 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 through F, which were received without objection. DOHA received the transcript of the hearing (Tr.) on April 17, 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. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 52-year-old engineer for a defense contractor. He was born in India. He has a bachelor's degree from an Indian university. He came to the United States in 1980 to attend graduate school and obtained a master's degree from an American university. He remained in the U.S. and obtained employment. He has spent most of his career since 1984 working for defense contractors in the aerospace industry. Applicant was married in 1983. His wife was also born in India. He and his wife became U.S. citizens in 2000. They have a 15-year-old child who was born in the U.S.¹

Applicant's mother and sister are citizens and residents of India. His mother is 73 years old. She has never worked outside the home. His father has been deceased for about ten years. He worked for many years for a local government agency until he retired more than 25 years ago. His sister is a college professor and lecturer. Her husband is an engineer in the private sector. His mother-in-law and father-in-law are also citizens and residents of India.²

Applicant considers himself a good son and son-in-law. He and his wife traveled to India in 2000, 2001, and 2005 to visit their family. His mother has twice visited Applicant in the United States. Applicant talks to his mother about once or twice a month. When his sister and her husband were living with his mother, he would speak to them on occasion when he called his mother. He does not regularly speak to them now that they are not living with his mother. His sister has never visited him in the U.S. His mother owns two homes in India, which he estimates have a value of about \$76,000. He has no foreign assets. Applicant estimates the value of his assets in the U.S. at about \$1,000,000.³

¹ Tr. at 26-28, 48; GE 1, 2; AE D.

² Tr. at 24, 29, 32-35; Applicant's response to SOR; GE 1, 2; AE D.

³ Tr. at 24, 36-43, 49-50; Applicant's response to SOR; GE 1, 2.

A witness on Applicant's behalf testified that he is an exemplary person, very ethical, and a loyal U.S. citizen. Character letters state that he is an excellent employee, highly ethical, and loyal. His performance appraisals have been superior.⁴

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

⁴ Tr. at 52-57; AE A-C, E, F.

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 to obtain 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

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. Three 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;

(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; and

(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.

Applicant's mother, sister, brother-in-law, and parents-in-laws are citizens and residents of India. 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), (b), and (d) 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 came to the U.S. as a young man to further his education. He remained, obtained a successful career as an engineer, married, had a child, and became a U.S. citizen. While he and his wife still have family in India, their life and future are here. India is a democracy and strategic partner of the U.S. 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) 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 was born in India. He came to the U.S. in 1980 to further his education. He remained in the U.S., thrived and became an established, highly regarded engineer, with considerable U.S. ties and assets. He and his wife became U.S. citizens in 2000. They have a 15-year-old child who was born in the U.S. His life, immediate family, professional career, financial assets, and future are now here.

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."⁵ 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 mother, sister, brother-in-law, or parents-in-law through his wife, extremely unlikely to happen. In the very unlikely event that a conflict

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

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.

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
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Subparagraphs 1.a-1.h:	For Applicant
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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.

Edward W. Loughran
Administrative Judge