



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



In the matter of:)
)
) ISCR Case No. 07-17092
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: Pamela J. Mazza, Esquire
Gunjan R. Talati, Esquire

April 17, 2008

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the Government’s security concerns raised under Guideline B, Foreign Influence. His eligibility for a security clearance is granted.

On October 24, 2005, Applicant submitted his Security Clearance Application (SF 86). On December 14, 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 pursuant to 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.

On January 17, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On February 13, 2008,

Department Counsel prepared a File of Relevant Material (FORM), containing six Items, and mailed Applicant a complete copy on February 15, 2008. Applicant received the FORM on February 27, 2008, and had 30 days from its receipt to file objections and submit additional information. Department Counsel did not object to the additional evidence Applicant submitted on March 14, 2008. DOHA assigned the case to me on March 21, 2008.

Procedural and Evidentiary Rulings

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India, along with 12 attachments. In Applicant's Response to Department Counsel's FORM, he extrapolated additional facts from the Government's attachments for which he seeks administrative notice. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a, 1.b, 1.d, 1.e and 1.f. He denied the allegation contained in ¶ 1.c and provided an explanation. His admissions are incorporated herein as findings of fact. Applicant attached four exhibits to his Answer, marked Exhibit A through D, which discuss historical and political information about India, amongst other issues.

Applicant is 37 years old and was born in India. He attended an Indian engineering college and earned a bachelor of technology degree in June 1991. After graduating from college, he moved to the United States for graduate school. From September 1991 to May 1993, he attended a well-known school in the United States, where he earned a Masters of Science degree in May 1994. Upon completing his education, he sought employment and legal sponsorship in order to remain in the United States. He became a U.S. citizen in May 2004, and subsequently renounced his Indian citizenship and surrendered his Indian passport. Since moving to the United States, he returned to India in 1992, 1994, 1996, 1997, 1998, 1999, 2000, 2002, and 2005 for recreational purposes. (Items 4 & 5). He has lived in the United States for more than 16 years. He identifies himself "exclusively and proudly as a United States citizen." (Item 4 at 7).

Applicant married his spouse in July 1992. She was born in India and became a naturalized U.S. citizen in May 2004. They have two children, both born in the United States. His wife's parents are resident citizens of India. His father-in-law is a doctor, working in the private sector and his mother-in-law is a housewife. He has limited contact with them, speaking to them once every few months. (Item 4).

Applicant's parents are resident citizens of India, as is his sister. Since retiring from private industry in 2003, his father has operated a small business, which works with private industry and not the Indian government. His mother is a housewife. His

sister is a physician, who practices in a private hospital. He contacts his father once every two to four weeks, and speaks to his mother, sister and in-laws every couple months. (Item 4). His brother is a citizen of India, residing in the United States.

In or about August 1998, Applicant started his own company for which he is the CEO. The company employs more than 200 employees, and contracts with numerous federal agencies, including the Department of Defense, as well as private commercial clients. It provides professional services to its customers in various fields and areas. For a period of time, Applicant subcontracted with his father's company to perform certain services for Applicant's clients. The contract represented approximately 1.33% of Applicant's \$18 million total revenue. In January 2008, Applicant terminated the contract between the two companies as a result of the Government's security concerns. He has no other foreign business or property interests. (Item 4). Applicant's father has never had a financial interest in Applicant's company. Applicant held an interim security clearance from 2004 until late 2007 without any evidence of adverse incidents. (Item 4 at 7).

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 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 used to evaluate 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. 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."

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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the Government's 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 four conditions that could raise a security concern and may be disqualifying 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;¹
- (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;
- (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

¹The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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 has frequent contact with his father, who is a resident citizen of India. He has less frequent contacts with his mother, sister, and in-laws. However, these relationships with family members create a heightened risk of foreign pressure or exploitation because entities in India have sought U. S. intelligence or proprietary information. His connections to his family also create a potential conflict of interest because the relationships are sufficiently close in nature and could raise a security concern over his desire to help his family, including his wife's mother and father. Prior to January 2008, Applicant subcontracted with his father's Indian company to perform work for Applicant's clients. That relationship also created a security concern, albeit a limited concern, given the small amount of money involved.

The Government produced substantial evidence of those four disqualifying conditions and the burden shifted to Applicant to produce evidence and prove mitigation. Four of the mitigating conditions under AG ¶ 8 are potentially applicable:

(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; 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.

AG ¶¶ 8(a) and (c) have some application to Applicant's relationships with his parents, sister and in-laws. None of those relatives are in positions connected with the Indian government or engaged in activities that would likely cause Applicant to be exploited or placed in a position of having to choose between them and the United States. Applicant's contacts with his family appear to be

infrequent, in general, but it is not clear that they are so casual that they could not create any risk of foreign influence.

Applicant established the application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of U.S. interests. He has lived in the United States since 1991 when he arrived to attend graduate school. After earning his advanced degree, he began working here and ultimately started a U.S. company that employs over 200 people with gross receipts of \$18 million. He became a U.S. citizen in May 2004, as did his wife. Both of his children were born in the U.S. In contrast, his ties to India have become minimal over the years. He renounced his Indian citizenship and does not have any financial or property interests there. He has infrequent communication with five relatives, living there. Over the course of 13 years, he visited India nine times for recreational purposes, the last visit occurring about three years ago.

Applicant also established the application of AG ¶ 8(f) to the security concern raised under AG ¶ 7(e). In response to the Government's concerns, Applicant terminated the subcontracts he had with his father's company in January 2008. Given that the value of those dealings was approximately 1.33% (about \$240,000) of his \$18 million gross revenues, the likelihood that the prior arrangement would have created a conflict for him was miniscule.

Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the "whole person" analysis. In evaluating the conduct of the applicant, the Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Those factors include: (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.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the

U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Substantial mitigating evidence weighs towards granting Applicant’s security clearance. Applicant is a mature person. He has lived in the United States for 16 years, and has been a naturalized citizen for the past four. Applicant’s spouse has been living in the United States since 1992 and is a naturalized citizen. His two children were born in the United States. He earned an advanced degree from a U.S. institution. He is a successful member of his business community, providing services to the U.S. government and private industry. He held an interim security clearance for over four years without evidence of adverse incidents. His ties to the United States are much stronger than his ties to five relatives living in India. There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and renounced his Indian citizenship after taking his U.S. oath of citizenship, in addition to surrendering his Indian passport. There is not any derogatory information about him in the record.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to foreign influence.² Overall, the record evidence leaves me without questions as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a to 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.

SHARI DAM
Administrative Judge

² I conclude that the whole person analysis weighs heavily toward approval of Applicant’s security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.