



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



In the matter of:)
)
-----) ISCR Case No. 07-17547
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: B. Daniel Lynch, Attorney At Law

September 24, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 19, 2005. On February 8, 2008, 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, 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.

The Applicant responded to the SOR on April 21, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 2, 2008. A notice of hearing was issued on July 8, 2008, scheduling the hearing for August 1, 2008. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant called two witnesses, and he testified on his own behalf. He also presented three exhibits, referred to as Applicant's Exhibits A through C. The official transcript (Tr.) was received

on August 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts concerning the current political condition in India. The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 46 years of age and has a Masters Degree in Mechanical Engineering. He is employed as a Mechanical Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Bombay, India in 1961 to Indian parents. He grew up there for twenty-two years prior to coming to the United States. In August 1984, he entered the United States on a student visa and attended a University from September 1984 through 1986, where he graduated and obtained his Masters degree. He received his green card in 1989, and became a United States citizen in 2001.

The Applicant's wife was born in India and she became a naturalized United States citizen in September 2002. She resides with the Applicant. They have an adopted child who was born in India in 2001. She was brought to the United States in 2002. The Applicant and his wife speak Hindu to their daughter at home.

The Applicant's mother, father, brother and sister, mother-in-law, father-in-law and brother-in-law, are citizens and residents of India. His mother is a 71 year old homemaker. His father is 80 years old and is retired from a company sales position. His brother owns a company that exports clothing to the United States. The brother's wife is a homemaker, but at one time was an accountant. His sister is a homemaker. His mother-in-law is a retired school teacher and his father-in-law is a retired government railroad worker who receives a government pension. His brother-in-law is managing an IT company in India.

The Applicant maintains close and regular contact with his parents and his brother in India. He communicates with them about two times a month or so. (Tr. p. 104). He also e-mails them and sends them pictures. His parents send him monetary gifts from time to time. (Tr. p. 106). He also maintains contact with his other family members in India that include his mother, father and brother-in-laws, although not as

frequently as his own parents. The Applicant has sent money to help his in-laws from time to time. Sometime last year he sent them \$10,000.00. (Tr. p. 111). He communicates with them once a month or so.

The Applicant has a brother and two aunts who reside in the United States. His brother has a green card, but is not a citizen. One of his aunts is a medical doctor who is a naturalized American citizen. The other is a retired school teacher who is now a homemaker. He has also several cousins and a niece and a nephew who reside in the United States.

The Applicant has significant financial interests in India. He inherited most of his money from his wealthy grandfather. His parents are also very wealthy. His large holdings include stock originally valued at approximately \$10 million dollars. Presently, it is valued at \$5 million dollars. (Tr. p. 92). The Applicant also has other stocks and Indian mutual funds that are managed by an investment company in India valued at approximately \$510,000.00. (Tr. p. 95). He has an Indian overseas Bank savings account valued at approximately \$120,000.00. (Tr. p. 96). He has another investment bank account with valued at \$400,000.00. (Tr. p. 96). The Applicant's parents are wealthy and he stands to inherit something from their trust. He estimates that their estate exceeds 10 million dollars. (Tr. p. 103). His mother and father visit the Applicant in the United States every two years or so.

The Applicant's assets in the United States are valued in total at approximately \$2 million dollars, which includes a house, stocks, bonds, cash and retirement accounts. (Tr. pp. 89 -90). He has never held a DoD security clearance.

The Applicant has traveled to India in 1999, 2001, 2002, 2003 and at the end of November 2007. He usually stays about three weeks or so. The Applicant enters India using his United States passport and his Indian visa. (Tr. p. 115).

The Applicant indicates that his goal is to live and retire in the United States. Since 2004, he has gradually been moving money from India into the United States. He recently transferred \$500,000.00 from India to the United States. He plans to, little by little, move his money to the United States, but only if it makes financial sense, meaning that it must be advantageous for him to do so. He believes that at this time the Indian markets are stronger so it is a better financial decision at this time. (Tr. p. 128).

Two witnesses, one who has known the Applicant almost twenty years, and the other who has known him three years, and both of whom have worked with the Applicant in the Aerospace Industry, testified that he is very honest, trustworthy and responsible. They believe that he is a very loyal and conservative United States citizen and they highly recommend him for a security clearance. (Tr. pp. 39-64).

Several letters of recommendation from professional colleagues, including supervisors and/or co-workers of the Applicant attest to his impeccable honesty and integrity. He is said to be meticulous, law abiding, stable, intelligent, responsible and security worthy. He is highly respected among his peers as one of the most capable Engineers in the company. (See Applicant's Exhibit A).

The Applicant received a special recognition award in October 2006, for his valuable contribution to the company. (See Applicant's Exhibit B).

I have taken administrative notice of the current political conditions in India. According to its constitution, India is a sovereign, socialist, secular democratic republic. According to the U.S. State Department, 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, torture, and rape, and a lack of accountability permeated the government and security forces throughout the country, creating an atmosphere of impunity. Custodial deaths, often made to appear as encounter deaths, remained a serious problem, and authorities often delayed prosecutions. Authorities often use torture during interrogations to extort money and summary punishment, and police and jailers typically assaulted new prisoners or threatened violence in exchange for money, favors, and personal articles.

Although the United States has sought to strengthen its relationship with India, there are some differences between the United States and India, including differences over India's nuclear weapons programs and the pace of India's efforts at economic reforms. During 2007, Members of Congress have expressed concerns at India's relations with Iran, a country with which India, launched a bilateral strategic partnership, including concerns about India's increasing cooperation with the Iranian military. Most recently in March 2008, the owner of an international electronics business pleaded guilty to conspiracy to illegally export controlled technology to government entities in India that participate in the development of ballistics missiles, space launch missiles, and fighter jets. Furthermore, there have been other cases involving the illegal export, or attempted illegal export of U.S. restricted, dual use technology to India. 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.

There is also evidence that India is a close ally of the United States, in particular in the areas of defense, the War on Terror, and in development and exchange of dense-related and other technology. (See Applicant's Exhibit C).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

7. (d) sharing living quarters with a person or person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion;

7. (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.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The Applicant is a naturalized United States citizen. However, he has significant family ties in India, that include his mother, father, brother, sister, mother-in law and father in-law who are citizens and residents of India. There is strong evidence of a close bond and affection with his family in India. He contacts them by telephone and e-mail, and sends them pictures from time to time. The Applicant's wife is also very close to her parents in India, as evidenced by the fact that the Applicant recently sent them as much as \$10,000.00 to provide financial support. These close relationships with foreign contacts pose a heightened security risk.

In addition, the Applicant has substantial business holdings and financial investments in India that he continues to protect. The value of his holdings in India far outweigh the value of his assets in the United States. This could subject the Applicant to a heightened risk of foreign influence or exploitation and ultimately compromise the national secrets. It does not go unrecognized that the Applicant has worked hard to establish himself as a responsible, educated, American citizen. However, he has not cut his ties from India. In fact, most of his financial decisions are strategically based on the Indian markets.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion; 7(d) sharing living quarters with a person or person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion, and 7(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* apply. None of the mitigating conditions are applicable.

It is noted that the current political situation in India elevates the cause for concern in this case. Although there is no direct evidence that his family members in India are associated in any way with the Indian government, there is evidence of a close bond and strong evidence of affection with his family in India. This bond and affection with his family could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. His substantial financial investments in India vastly outweigh his assets in the United States and could pose a security risk. Therefore, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

- Subparas. 1.a.: Against the Applicant
- Subparas. 1.b.: Against the Applicant
- Subparas. 1.c.: Against the Applicant
- Subparas. 1.d.: Against the Applicant
- Subparas. 1.e.: Against the Applicant
- Subparas. 1.f.: Against the Applicant
- Subparas. 1.h.: Against the Applicant
- Subparas. 1.i.: Against the Applicant
- Subparas. 1.j.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge