



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



In the matter of: )  
)  
) ISCR Case No. 08-09012  
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Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro Se*

September 4, 2009

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

On March 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B. 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 May 6, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2009. DOHA issued a Notice of Hearing on July 21, 2009. I convened the hearing as scheduled on August 17, 2009. The Government offered Exhibits (GE) 1 through 3 and Hearing

Exhibits (HE) I through IV, requesting I take administrative notice of the latter. Applicant did not object, the exhibits were admitted, and the request for administrative notice was granted. Applicant testified and offered Exhibits (AE) A and B, they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 21, 2009.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He immigrated to the U.S. from Sri Lanka in 1990 and became a naturalized citizen in 2006. He earned a bachelors degree in 1993 and later earned a masters degree. He has worked for a federal contractor since 2006 and has held a public trust position since 2006.<sup>1</sup>

Applicant grew up in Sri Lanka and moved to the U.S. to study. He earned an associates degree in Sri Lanka. His mother lives in Sri Lanka and is ailing. He travels there to visit her. Since 2000, he has traveled about six to seven times and stays between 10 and 20 days per visit, with his mother. He calls her on the telephone about once a month. He provides financial support to his mother. He estimated that in 2008 he provided approximately \$3,000 and to date in 2009, approximately \$1,000. In past years, he has provided approximately \$500 to \$1,000 to his mother. His mother is a retired school teacher who receives a pension from the government. The health care system and hospitals are funded by the government and there are also private hospitals. The money Applicant sends to his mother is to subsidize her medical care. His mother owns her home. He does not believe he has any inheritance rights, and the home will go to his brother when she dies.<sup>2</sup>

Applicant married his wife in 1997 in the U.S. She is a medical doctor. She is a citizen of Sri Lanka and was visiting the U.S. when they met. She moved back to Sri Lanka in February or March of 1998, and gave birth to a daughter in July 1998. His wife returned to the U.S. in 2000 and they lived together until 2003. She then moved back to Sri Lanka with their daughter and has not returned. His daughter is a citizen and resident of Sri Lanka. Applicant provides child support for his daughter. He pays for most of her tuition to attend additional classes outside of school. He estimated he provides approximately \$2,000 a year in child support.<sup>3</sup>

Applicant is estranged from his wife. When he travels to Sri Lanka, he has limited contact with her and then only when he goes to visit his daughter. He visits his daughter about once a year. He may speak on the phone with his wife about his daughter, but this contact is infrequent. He calls his daughter about once a month. He admits he does

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<sup>1</sup> Tr. 10, 22-24.

<sup>2</sup> Tr. 24, 38-39, 46-47, 52-54.

<sup>3</sup> Tr. 19-21, 30-40, 43-45.

not have a good relationship with his daughter. He does visit with her, at her house, when he travels to Sri Lanka. He will spend a few hours with his daughter during his visits and the rest of the time with his mother. His daughter does not visit Applicant's mother. His wife has not returned to the U.S since she left in 2003. Applicant anticipated that after his mother dies, he will not go back to Sri Lanka to see his daughter. He stated it is up to his wife whether she will permit him to see his daughter or visit him in the U.S. He stated it is difficult for him to see her in Sri Lanka and it is only if his wife allows it. He stated he doubted his daughter would come and stay with him.<sup>4</sup>

Applicant's parents-in-law live with his wife in Sri Lanka. The only time he sees them is when he visits his daughter annually. His father-in-law is a retired government worker. His mother-in-law is a retired nurse who worked for the Sri Lankan hospital system.<sup>5</sup>

Applicant is still legally married to his wife. He has not filed for a divorce. In his Office of Personnel Management (OPM) interview in 2006, he stated that living apart has put a strain on their marriage, but they are not legally separated nor will they divorce. At his hearing, Applicant stated he contacted an attorney in 2003 regarding a divorce. His statements are inconsistent. He has not pursued a divorce because of the cost. Applicant's father was sick in 2005 and died in 2006. In 2007, his mother became ill. He stated he has been focused on those problems instead.<sup>6</sup>

Applicant stated he has no relationships in the U.S. His focus is on his job and he wants to continue to live in the U.S. He has no options in Sri Lanka and that is the reason he plans on remaining in the U.S.<sup>7</sup>

Applicant has no relatives in the U.S. He owns a house he bought in 2005 for approximately \$480,000. He does not own any property in Sri Lanka. He has no foreign investments. He estimated he has approximately \$6,000 in savings and \$7,000-\$8,000 in his checking account. He also has approximately \$5,000 in a 401k account.<sup>8</sup>

Applicant's brother is a citizen and resident of Sri Lanka. He does not always see him when he visits Sri Lanka. His brother works for a private factory. His brother's wife works for the same factory. Applicant does not speak to his brother. His brother does not participate in the care for their mother. His brother has not discussed moving to the

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<sup>4</sup> Tr. 41-43, 47-51, 54.

<sup>5</sup> Tr. 52.

<sup>6</sup> Tr. 30, 65-68.

<sup>7</sup> Tr. 67-68.

<sup>8</sup> Tr. 26-30, 39.

U.S. Applicant last saw his brother at his father's funeral in 2006. No one in Applicant's family visits him in the U.S.<sup>9</sup>

When Applicant visits Sri Lanka, he registers his visit and where he is staying with the local police station, as required of all foreign visitors. He advises the police he is a U.S. citizen staying with his mother.<sup>10</sup>

Applicant traveled and visited Sri Lanka in 1993 and then approximately every three years until his parents' health became an issue. He then increased his visits and visited in 2000, 2003, 2005, 2006, 2007, 2008, and 2009. He visited both his mother and daughter on his last visit in April 2009.<sup>11</sup>

Applicant provided a letter from a person who worked with him for the past twelve months. His coworker stated Applicant appears to be an honest person who has no personal or political issues. Applicant also provided a certificate of appreciation from an employer.<sup>12</sup>

### **Sri Lanka<sup>13</sup>**

Sri Lanka is a constitutional, multiparty republic. The law requires all foreign guests in private households to register in person at the nearest local police station. The U.S. State Department warns U.S. citizens of the dangers in travel to Sri Lanka. Despite the government's announcement that it had achieved victory over an armed insurgent group, there is still potential for instability, including terrorist attacks. Prior to the victory being declared in May 2009, the country was embroiled in more than 25 years of civil war and terrorism.

The U.S. government designated a Sri Lankan group as a foreign terrorist organization. The Sri Lankan government and the terrorist organization have engaged "in any means necessary" tactics to fight the war, including the government's use of paramilitary organizations that rely on abduction, extrajudicial killings, and other illegal tactics to combat the terrorist group.

Travel in certain parts of the country is discouraged due to possible renewed insurgency and uncleared land mines. U.S. Government officials are prohibited from non-official travel to certain parts of the country.

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<sup>9</sup> Tr. 51-52, 61.

<sup>10</sup> Tr. 62-64.

<sup>11</sup> Tr. 59-61.

<sup>12</sup> Tr. 71-72; AE A and B.

<sup>13</sup> HE I-IV.

The government's respect for human rights declined as armed conflict escalated. Unlawful use of child-soldiers, politically motivated killings, arbitrary arrests and detentions, and unlawful killings by paramilitary groups and others working with the awareness of the government, along with serious human rights abuses, were reported during 2008.

## **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 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 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 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. I have considered all of them and especially considered the following:

- (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) 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
- (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.

The 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. Applicant's wife, daughter, mother, brother and parents-in-law are all citizens and residents of Sri Lanka. He also travels regularly to visit his mother and daughter. His wife is employed at a hospital there and his mother and parents-in-law receive pensions through the government. Although he describes his relationship with his wife as estranged, he remains married to her. His relationship with his wife, daughter and mother creates a heightened risk of foreign pressure, or attempted exploitation. Applicant's connection with his wife, daughter and mother also creates a conflict of interest because his continuing relationships are sufficiently close to raise a security concern. Therefore, I find disqualifying conditions (a) and (b) apply. It does not appear Applicant has a financial or business interest in Sri Lanka and disqualifying condition (e) does not apply. It appears Applicant does not maintain contact with his brother. Applicant is not sufficiently close to his parents-in-law to raise a security concern. I find no disqualifying conditions apply to his brother or parents-in-law. Applicant does not share living quarters with his relatives, so disqualifying condition (c) does not apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; and
- (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.

Applicant has traveled to Sri Lanka to visit his mother and daughter regularly. He provides financial support to both of them. He remains married to his wife, even though they do not live together. Her parents live with his wife and his daughter. He calls his daughter on the phone. Applicant has not met his burden of establishing that it is unlikely he will be placed in a position of having to choose between the interests of his family living in Sri Lanka and the interests of the U.S. His contacts with family in Sri Lanka could potentially force him to choose between the two.

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 foreign government, or the country is known to conduct intelligence operations against the U.S. Sri Lanka requires Applicant to register at the local police station and list where he is staying. No evidence was presented that Sri Lanka conducts intelligence operations against the U.S. However, there is evidence regarding Sri Lanka's human rights record and active terrorist groups operating in the country. This places the burden of persuasion on Applicant to demonstrate that his contacts in Sri Lanka do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. With its negative human rights record and its government's willingness to use paramilitary forces and "any means necessary" to combat the enemy should the terrorist threat be regenerated and civil war be reignited, it is conceivable that Applicant's family members could be vulnerable to coercion. I find mitigating condition (a) does not apply.

Applicant has been a U.S. citizen since 2006. He has no family in the U.S. All of his family ties remain in Sri Lanka. His wife, daughter, and mother are citizens and residents of Sri Lanka. His mother receives a government pension. He visits Sri Lanka regularly to visit his daughter and mother. He provides financial support to both of them. He talks on the phone to them. He has some contact with his wife. Considering Sri Lanka's human rights record and the potential conflict of interest, I find under the circumstances mitigating condition (b) does not apply.

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant visits and provides financial support to his mother and daughter. He remains married to his wife and they have discussions regarding their daughter. These contacts are not casual and infrequent. I find mitigating condition (c) does not apply.

### **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 became a U.S. citizen in 2006. He has been married since 1997 and has a daughter. Both his wife and daughter are citizens and residents of Sri Lanka. Applicant's mother is a citizen and resident of Sri Lanka. She receives a government pension. Applicant occasionally sees his parents-in-law when visiting his daughter, but has minimal emotional contact with them. He visits his mother and daughter regularly. He provides financial support to both. He talks on the phone to them. He has less contact with his wife. He has no family in the U.S., but does have assets here. His last contact with his brother was at his father's funeral. He does not maintain regular contact with him. Considering his contacts, Sri Lanka's human rights record, and the potential conflict of interest, Applicant has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Foreign Influence guideline.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d.-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly in the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge