



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



In the matter of:)
)
) ISCR Case No. 10-00410
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

September 24, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

On April 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on April 28, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 17, 2010. DOHA issued a Notice of Hearing on July 19, 2010. I convened the hearing as scheduled on August 24, 2010. The Government offered Exhibits (GE) 1 and 2. Applicant did not object and

they were admitted. The Government requested administrative notice be taken of certain facts relating to India as contained in Hearing Exhibit (HE) I. I took administrative notice of the source documents. I did not consider for administrative notice Department Counsel's brief. This document was admitted as GE 3. The Government offered a chart for demonstrative purposes. It was marked as HE II. Applicant and two witnesses testified on her behalf. Applicant offered Exhibits (AE) A through D, which were admitted without objections. She also offered documents for administrative notice and they were marked as HE III. DOHA received the hearing transcript (Tr.) on September 1, 2010.

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 58 years old. She was born in India and has lived in the United States since 1978. She has worked for her current employer, a federal contractor, for three and a half years as a senior test engineer. Before then, she was employed for 15 years with the same employer. She and her husband immigrated to the United States in 1978. Her husband worked for the same employer from 1978 until he retired in 2008. She has three children, ages 35, 33, and 26 years old. Her oldest daughter is trained as an engineer, but is presently a homemaker. She is married to an American citizen and they have two children. Her middle daughter is working on her PhD and works for a large company. She is also married to an American citizen and has two children. Her youngest daughter is completing a residency in dentistry. She is not married. Her two oldest children were born in India. In 1987, Applicant and her family became naturalized American citizens. Her children and their families reside in the United States. Applicant earned a bachelor's degree in India.¹

Applicant has three brothers and a sister who are citizens and residents of India. Brother #1 is a judge employed by the state government. He is married and has three grown children. He is expected to retire in September 2010. Brother #2 is a retired manager of a petroleum depot. It is unknown if the depot is government owned. His wife is a homemaker and they have two grown children. Brother #3 worked at a bank and is retired. It is unknown if the bank was government owned. His wife is a homemaker. They have two grown children. Applicant's sister is a homemaker. Her sister's husband is a retired civil engineer.²

Applicant's husband has three brothers who are citizens and residents of India. All three are owners and partners in a brick manufacturing company. Their wives are homemakers.³

¹ Tr. 57-64.

² Tr. 77-80-82, 41-53.

³ Tr. 53-55.

Applicant's husband has three sisters who are citizens and residents of India. Sister-in-law #1 is a homemaker. Her husband is retired. Applicant did not know what he did for a living. Sister-in-law #2 is a homemaker. Her husband sold life insurance about ten years ago. Applicant does not know how he is currently employed. Sister-in-law #3 is a homemaker and she and her husband own a small business. Applicant believes the business manufactures and sells jewelry.⁴

Applicant also has three brothers who are citizens and residents of the United States. Brother #4 immigrated to the United States in 1962 and is employed by a United States government agency. He has worked there for more than 30 years. He married a citizen of the United States and they have two children, born in the United States. He sponsored Applicant and her family for entry into the United States. Brother #5 immigrated in 1967 and worked for a department store for many years until it closed. He was then employed by the federal government as a senior accountant for about 12 years. He is married to a United States citizen who works for a county government. They have three children, one who was born in India, and the other two were born in the United States. His eldest child is a naturalized United States citizen. All three children are married and have children. Brother #6 immigrated in 1981. He works in the United States for an international bank. He married a United States citizen. His wife works for a federal agency and holds a security clearance. They have two children who are in college. Both are citizens of the United States. Applicant's parents and her husband's parents are deceased. None of Applicant's relatives have served in the Indian military.⁵

Applicant visits India about every three to four years to visit family, unless there is an emergency. Her visits are decreasing since her parents and husband's parents have passed away. All of her family is scattered and busy with their own jobs and families, so the family ties are looser. There is no longer a central family figure to host them. Since 1995, she has visited India four times. Because the family is scattered throughout the country, depending on how much time she has when she visits, she may only visit those that live close to each other. Her three brothers-in-law live close to each other so she will visit them. Her family in India has visited Applicant and her family in the United States. The most recent visit was in 2004 for her daughter's wedding. Four family members from India attended. Prior to then, a family member visited in 1999 and 1987.⁶

Applicant contacts someone in her family in India about once a month. She alternates who she contacts. She and her husband may make another phone call monthly to his side of the family. If there is a family problem they may contact them more than once a month. She rarely contacts her sisters-in-law. If someone is traveling

⁴ Tr. 56-58, 66.

⁵ Tr. 77, 25-41, 58.

⁶ Tr. 65-68, 82-84.

to India, she may, on occasion, have them deliver a gift to a family member. She never mails gifts to family in India.⁷

Applicant has regular contact with her brothers living in the United States. They all live within a ten mile radius of each other. They visit often and get together for family events and holidays. Applicant and her family belong to their denominational temple.⁸

Applicant and her husband do not own any property in India. They do not have any investments or accounts located there. They do not have any inheritance rights in India.⁹

Applicant and her family have lived in their present home for 11 years. Before that, they lived in the same house for 15 years. Applicant and her husband own their home in the United States with an estimated value of \$550,000. Their cash savings are estimated at about \$160,000. Her husband has a 401(K) pension account worth about \$450,000. Applicant has a 401(K) pension plan worth about \$80,000. They own three cars. Applicant and her husband do not provide any financial support to their family in India.¹⁰

Applicant is registered to vote in the United States and exercises her right. She has never been arrested. She and her husband plan on remaining in the United States after she retires. Applicant considers herself a loyal, hardworking American, who is dedicated to her job. She consistently complies with all of the rules and regulations of her company and their security requirements.¹¹

Applicant's supervisor testified on her behalf. Applicant has worked under her supervision for eight months. She is considered an excellent worker and when the supervisor is absent, Applicant is the one she chooses to covers her responsibilities. Her supervisor has never observed Applicant break any rules. She completely complies with all of the rules and she considers her a quality individual. She noted that Applicant's family now has three generations of American citizens. She is aware that Applicant is a devoted mother and grandmother. She heard Applicant make a comment about the United States. It was: "what a wonderful place it's been to raise three grown daughters and grandbabies."¹²

⁷ Tr. 68-70, 72-73.

⁸ Tr. 70-71, 84.

⁹ Tr. 71.

¹⁰ Tr. 73-76, 80.

¹¹ Tr. 84-85.

¹² Tr. 86-95.

Applicant's brother's wife testified on her behalf. She has known Applicant for 44 years. She considers her a trustworthy, honest, and intelligent person.¹³

Applicant believes she is respected by her peers and supervisors she works with and is held in high regard because of her work ethic and the quality of her work. She respects the laws of this country.¹⁴

Applicant provided character letters that were considered. Her supervisor for the past three and a half years provided a statement describing Applicant as a loyal and dedicated employee. She has demonstrated that she loves the United States and is dedicated to making a positive impact. She considers her to be patriotic and trustworthy, and she highly recommended Applicant be granted a security clearance.¹⁵

A colleague of eight years provided a statement describing Applicant as intelligent, hardworking, and enthusiastic. She gets along with all of the team members. She is punctual and treats members fairly. She is honest and loyal and always follows the company's rules. Applicant helps others and has outstanding initiative in learning new skills. She is considered an asset who possesses great management and supervisory skills.¹⁶

Applicant provided a performance appraisal report reflecting her solid performance and outstanding contribution to the company. She has been recognized by her past employer for her excellent work.¹⁷

India¹⁸

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 serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearance, 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 were committed in recent

¹³ Tr. 96-101.

¹⁴ Tr. 104; AE D.

¹⁵ AE A.

¹⁶ AE B.

¹⁷ AE D, E, F.

¹⁸ HE I, III.

yeas by separatist and terrorist groups. In November 2008, the terrorists coordinated an attack at a hotel in Mumbai, frequented by westerners.

The United States recognizes India as key to strategic interests and has sought to strengthen its relationship with it. 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 and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. In March 2008, an American businessman pleaded guilty to conspiring to illegally exporting technology to entities in India.

The United States 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 addressing differences and shaping a dynamic and collaborative future. The United States and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. The following are potentially applicable:

- (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 three brothers, sister, three brothers-in-law, and three sisters-in-law are citizens and residents of India. Applicant maintains some contact with her family living there. It is on a routine basis and sporadic as to each member. She visits India and some of her relatives about every three to four years. Her telephone contact is about twice a month to different family members. Applicant's connections to her numerous family members could potentially create a heightened risk of foreign influence or potential conflict of interest. The above disqualifying conditions are raised.

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.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant has numerous family members who are citizens and residents of India. The United States maintains close relations with India.

Applicant maintains some contact with her family and her husband's family in India, but it is apparent that after the passing of their parents, the contact has been sporadic. She does not have steady contact with a specific family member, but rather attempts to maintain some contact with each throughout the year. Her contact is infrequent, but not casual. Therefore, I find AG ¶ 8(c) does not apply.

All except one brother, who is a judge, soon to be retired, have no known ties to the Indian government. I do not find Applicant's relationship with her family in India or her infrequent visits there create a heightened security risk. There is no evidence India pressures its citizens to obtain classified information, and it is highly unlikely Applicant would have to choose between loyalty to her extended family in India and the United States.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that 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, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. India has a close and friendly relationship with the United States. They are the two largest democracies in the world. Although India has had some human rights issues and some terrorist incidents, it does not appear that these involved exploiting their citizens. India is an active collector of U.S. economic intelligence. However, there is no indication that they target or exploit their own citizens to obtain it. It is also very unlikely that Applicant would be forced to choose between loyalty to the United States and her family in India. Based on India's relationship with the United States, it is very unlikely that intelligence officials would attempt to pressure Applicant's family in an attempt to gather valuable or classified information from the U.S through Applicant. I find mitigating condition AG ¶ 8(a) applies.

Applicant is a devoted American citizen. She has lived in the United States since 1978 and been a citizen since 1987. There are three generations of her family that are United States citizens. She immigrated to the United States because of the opportunity it offered her and her family. She and her husband raised their three daughters here and have four grandchildren who were born here. Although she has many relatives living in India, she equally has many relatives living in the United States. She maintains regular and close contact with her U.S. relatives. She has no assets in India. She and her husband have accumulated substantial assets in the United States. Her ties to the United States are significant. Her contact with her Indian relatives is waning and sporadic. It is clear that Applicant's life and ties to the United States are monumental. Applicant has a deep and longstanding loyalty to the United States and she can be expected to resolve any conflict of interest in favor of it. Therefore, I find mitigating condition AG ¶ 8(b) applies.

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 relevant 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 commonsense 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 has lived in the United States since 1978 and has been a citizen since 1987. Her husband worked for 30 years for the same U.S. employer and retired. Her children are United States citizens, as are their husbands, and their children. Applicant and her husband's assets are all in the United States. Although they both have siblings that are citizens and residents of India, the family ties that are most important to them live in the United States. There is an overwhelming amount of evidence that Applicant is a devoted and loyal American who would resolve any conflict of interest in favor of the United States. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

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 F:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge