



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



In the matter of:)
)
) ISCR Case No. 10-04698
)
)
Applicant for Security Clearance)

Appearances

For Government: William T. O’Neil, Esquire, Department Counsel

For Applicant: Alan V. Edmunds, Esquire

May 18, 2011

Decision

O’BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on March 8, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant’s request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On October 26, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).² Applicant submitted an Answer to the SOR, in which he admitted the three allegations. He signed his notarized Answer on November 10, 2010, and requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on December 6, 2010, and the case was assigned to me on December 23, 2010. DOHA issued a Notice of Hearing on January 10, 2011, and I convened the hearing as scheduled on January 27, 2011. Department Counsel offered two exhibits, which were marked and admitted as Government Exhibits (GE) 1 and 2. Applicant and three witnesses testified, and he offered 18 exhibits, which I admitted as Applicant Exhibits (AE) A through R. I granted Applicant's request to hold the record open to submit additional documentation. Department Counsel forwarded one document, without objection, which I admitted as AE S. The record closed on February 1, 2011.

Procedural Ruling

Department Counsel requested that I take administrative notice of facts relating to India, set forth in fifteen documents, and an attached summary (Hearing Exhibit (HE) I). The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 39 years old, was born in India. He earned a masters degree in computer applications there in 1995. He did not serve in the Indian military. He married in 1997, and came to the United States in 1999, at the age of 28. Applicant and his wife became naturalized U.S. citizens in 2009.³ His two children, 7 and 11 years of age, are native-born U.S. citizens. He is a principal consultant for a defense contractor where he has worked since 2002. Applicant's wife works outside the home. Applicant's and his

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant possessed an Indian passport that would have expired in 2004 or 2005. He surrendered it to his facility security officer. She submitted a letter stating that she destroyed it. Guideline C is not alleged. (GE 2; AE M; Tr. 54)

wife's annual salaries amount to almost \$200,000. This is Applicant's first application for a security clearance. (GE 1, AE B, F, K; Tr. 45-46, 49, 56-59)

Applicant's parents are citizens and residents of India. His mother, 63 years old, taught intermittently in private schools in the 1980s or 1990s. She is now a housewife. She visits Applicant in the United States and stays for several months per year. Applicant's father is 64 years old. He was bank branch manager until his retirement in 2000 or 2001. Applicant is uncertain whether the bank was affiliated with the Indian government. He has visited Applicant in the United States twice in the past ten years. Applicant talks with his parents by phone weekly, and contacts them by email two to three times per month. Applicant's parents are unaware of the type of work he performs, or that he is seeking a security clearance. (GE 1, 2; Answer; Tr. 46-52, 57-59, 64)

Applicant has one brother, 34, who is a citizen and resident of India. They are in touch approximately once per week. He works for a privately owned company. Applicant's brother has no affiliation with the Indian government. (GE 2; Tr. 52, 71-72)

Applicant visited his family in India in 2005, and twice in 2008. When he visits, he stays two to three weeks. On those occasions, he sees his parents and brother. He also visits his parents-in-law, who are citizen-residents of India. They visit Applicant and his wife in the United States every two to three years. Applicant talks with them approximately once per week. His father-in-law, 74 years old, was an engineer in the Indian Air Force. He retired in 1979, and receives a small military pension. He began working in the private sector for a ball-bearing manufacturer. He retired in 2000. Applicant's mother-in-law is a housewife. Applicant also has cousins in India, but has little or no contact with them. (GE 2; Tr. 52-54, 63-64, 69, 72-75)

Applicant's parents own a home in India, but Applicant is unaware of any possibility of inheriting it. He has no other property, bank accounts, investments, business interests, or connections with Indian companies. He purchased his first home in the United States in 2002, and bought his present home in 2009. (Tr. 49, 64-65)

Applicant's performance evaluations for 2006 through 2010 show that he has been rated as meeting expectations or above expectations in all categories. He was formally recognized for his contributions in 2009. In 2010, his manager described him as a team player with an "incredible" work ethic. Letters submitted by Applicant's co-workers and friends describe him as disciplined, honest, highly trustworthy, and able to work efficiently under stressful conditions. The human resources director stated Applicant has received numerous awards for his work, and described him as "dedicated, honest and loyal." (AE A-E, G-J, L, N-Q, S)

Applicant's current supervisor testified that he has worked closely with Applicant over the past 18 months. He noted that Applicant has consistently increased the company's efficiency, and he relies on Applicant's expertise. He rates Applicant at the top of all those with whom he has worked in the past 20 years. He knew Applicant

when he was about to become a U.S. citizen, and commented on Applicant's excitement and anticipation. A former co-worker, who has known him for ten years, noted that Applicant is "one of the most honest people I've had the opportunity to work with." (AE E; Tr. 24-34, 42)

Administrative Notice

I take administrative notice of the following facts.⁴ 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. Since gaining independence in 1947, India has had a tumultuous history, particularly with regard to its relations with Pakistan. Within India, sporadic outbreaks of religious riots and violent attacks by a variety of separatists and terrorist groups have occurred.

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 has permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished.

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. Governmental and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

Despite past differences regarding India's nuclear weapons program, its cooperation with Iran in some policy areas, and the pace of India's efforts toward economic reform, the United States recognizes India as key to its strategic interests and has sought to strengthen the relationship. 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, fighting terrorism, and creating a strategically stable Asia.

India and the United States are partners in the fight against global terrorism. India has demonstrated its commitment to political freedom. It is seeking a permanent seat on the United Nations Security Council. The United States and India recently issued a joint statement of their intentions to foster bilateral relations by establishing working groups to address strategic cooperation, energy and climate change, education, economics, trade, agriculture, science, technology, health, and innovation.

⁴ The facts cited derive from the summary and documents contained in Hearing Exhibit I.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁷ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of the Government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to 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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 relevant disqualifying conditions under AG ¶ 7 are:

- (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 has close ties to his parents, brother, and parents-in-law, who are citizen-residents of India. He is in touch with them about weekly. He visited India in 2005 and 2008. His mother and his in-laws visit him in the United States as well. His father-in-law was a member of the Indian military until he retired in 1979. Such ties support a conclusion that a heightened risk of foreign influence exists. Disqualifying conditions AG ¶ 7(a) and (b) apply.

The foreign influence guideline includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

- (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 United States; and
- (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.

The mere possession of close family ties to persons 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 frequent, non-casual 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.⁹ Here, Applicant's parents, brother, and in-laws live in India. Applicant has frequent contact with them, indicating his affection and sense of obligation. Although Applicant's father-in-law was a member of the Indian military, he retired more than 30 years ago. The United States and India have a long-standing, stable relationship, and share common strategic goals. India is a democracy and a partner in combating terrorism. Given the nature of the country involved, it is unlikely that the government would exploit him or his relatives based on their relationship. Moreover, Applicant has strong ties to the United States. His wife and children are U.S. citizens; he and his wife earn substantial incomes through their work for U.S. companies; and he has owned two homes here in the past ten years. I conclude Applicant would choose these long-standing relationships over his ties to India. AG ¶¶ 8(a) and 8(b) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Foreign family ties raise security concerns because of the potential for exploitation. Here, Applicant has close ties with foreign family members that raise such concerns. However, they do not outweigh his ties to the United States. Applicant and

⁹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 099-0424 (App. Bd. Feb. 8, 2001).

his wife have lived here for 12 years. His wife and children are all U.S. citizens. Numerous friends, co-workers, and his supervisor attest to his honesty and dedication, and his exemplary work for the U.S. government over the past nine years. Applicant has no business or financial ties to India. He owns a home here, which represents a substantial tie to the United States. Given Applicant's family, economic, and social ties in the United States, I conclude that Applicant would resolve any conflict of interest in favor of the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a. – 1.c.	For Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge