



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



In the matter of:)
)
) ISCR Case No. 11-09910
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel

For Applicant: *Pro se*

06/17/2013

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, Applicant’s request for a security clearance is granted.

Statement of the Case

On February 14, 2013, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).¹ Applicant signed his notarized Answer to the SOR on March 8, 2013, in which he admitted all of the allegations under Guideline B. He also requested a hearing before an administrative judge.

The case was assigned to me on April 24, 2013. DOHA issued a Notice of Hearing on May 10, 2013. At the hearing on June 5, 2013, I admitted two Government

¹ See Executive Order 10865 and DoD Directive 5220.6. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

exhibits, (GE 1 and 2) and four Applicant exhibits (AE A–D). DOHA received the transcript (Tr.) on June 13, 2013.

Procedural Ruling

I take administrative notice of facts relating to India. They are set forth in 15 documents offered by Department Counsel. 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 additional findings of fact.

Applicant, 43 years old, was born in India. He earned a bachelor's degree in India in 1992. He came to the United States that year, at the age of 23, and earned a master's degree in 1995. He married an Indian citizen in 1997. Applicant, his wife and their two children, who are 10 and 13 years old, became U.S. citizens in 2010. Between 2000 and 2009, Applicant was employed as an information technology manager. He is currently a senior application programmer for a federal defense contractor, where he has been employed since 2009. This is his first application for a security clearance. (GE 1; Tr. 17-20, 39)

Applicant's parents are citizens and residents of India. His mother has always been a homemaker. His father, 75 years old, was a finance department accounts officer for a state government in India from 1961 to 1995. He has been retired for about 18 years, and is ill with cancer. He receives a monthly government pension. Applicant speaks with them once per week. His parents visited him in the United States twice, most recently in 2008. Applicant travels to India once every two or three years. (GE 1, 2; Tr. 26-28, 32-34)

Applicant's sister, her husband, and their two children are citizens and residents of India. She is a homemaker, and her husband is a self-employed real estate agent. They have two sons. Applicant's 24-year-old nephew is a software engineer for a private company. His 22-year-old nephew is a student. Applicant talks with his sister and brother-in-law about once per month, and with his nephews about once every two or three months. Applicant's wife also has family members who are citizen-residents of India. His mother-in-law, who is 58 years old, has held a clerical job in a state hospital since 1976. She reviews purchase orders for hospital supplies. Applicant's wife's brother and his wife work at a privately owned software training center. Applicant testified he and his wife have a close relationship with their families. He also testified that, ". . . they don't influence my life in any way, because like I have my own family here, my wife and children . . ." (GE 1, 2; Tr. 15, 28-30, 32-35)

Applicant has two bank accounts in India. He keeps funds there to help his father pay for his cancer treatments. For the past four or five years, he has sent \$400 to \$500 monthly to the accounts. In his 2011 security clearance application, he listed the balances at \$5,000 and \$10,000. At the hearing, he said the balances have decreased to between \$400 and \$600 each. He also stated that he has tried to close them, but learned that he would have to travel to India to do so. (GE 1, 2; Tr. 15-16, 24-25, 36)

In April 2000, Applicant purchased an undeveloped lot in India for about \$10,000. He thought he might build a house for his family in India, but he has not built on the property. When Applicant completed his security clearance application in March 2011, he estimated the value at \$200,000. At the hearing, he stated he has had it appraised, and the value is \$125,000. Unless he needs the funds for some unexpected event, he plans to sell the lot in the future to finance his children's college educations in the United States. (GE 1; AE B; Tr. 16, 23-24, 32-33)

Applicant's assets in the United States include two properties. His primary residence is worth \$553,920. A rental unit that he owns, which was his previous residence, has been assessed at \$249,000. His retirement fund has a balance of about \$300,000. He has savings and checking accounts totaling more than \$38,000, an education fund for his children valued at about \$18,000, and investment accounts of \$38,500. (AE A, C, D; Tr. 16-17, 20-22, 25-26, 36-37)

Administrative Notice

Republic of India (India)

I take administrative notice of the following facts. India is a sovereign, secular democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.2 billion. Since gaining independence in 1947, India has had a tumultuous history, and continues to experience terrorist and insurgent activities.

The Indian government generally respects the rights of its citizens, but serious problems remain. The most significant human rights problems are security force abuses including extrajudicial killings, torture, and rape. Authorities infringe on citizens' privacy rights, and widespread corruption at all levels of government continues.

India, along with other countries, has been involved in criminal espionage and cases involving violation of U.S. export controls. Cases have involved 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, and its cooperation with Iran in some policy areas, 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 remains one of the world's most terrorism-afflicted countries. India and the United States are partners in the fight against global terrorism. A Bilateral Counterterrorism Cooperation Initiative was formally launched in July 2010. As of 2011, the number of terrorist-related deaths had decreased compared to 2010. The State Department's Anti-Terrorism Assistance program has conducted scores of training courses for more than 1,600 Indian law enforcement officials. In May 2011, a U.S.-India Homeland Security dialogue was established to foster cooperation on numerous law enforcement issues. As of November 2012, counter-terrorism cooperation with India was described by the Obama administration as a "pillar of the bilateral relationship" between the two countries.

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).² 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 interest³ 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.⁴ A

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

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.⁵

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern related 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 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 following disqualifying conditions under AG ¶ 7 are relevant:

- (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; 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.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Applicant has ties of affection for his parents, sister, nephews, and in-laws, who are citizen-residents of India. His contact with them varies from once per week for his parents, to once every two or three months for his nephews. He visits India every few years, and his parents visited him in the United States twice. He has been helping his father financially for several years by providing funds for his cancer treatment. Such ties constitute a heightened risk of foreign influence. Disqualifying conditions AG ¶¶ 7(a) and (b) apply. Applicant also has a plot of land and two bank accounts in India, and ¶ 7(e) applies.

The foreign influence guideline also 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;

(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; 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.

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. Here, Applicant has ties to his parents, sister, in-laws, and nephews in India. His mother-in-law is a state government administrative worker. His father was a state government employee, but has not held that position for more than 17 years. However, the nature of the foreign country must also be considered in evaluating the likelihood of exploitation. 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 Applicant or his relatives based on their relationship. It is unlikely that Applicant would have to choose

between the interests of his family in India and the interests of the United States. AG ¶ 8(a) applies.

Applicant has ties to his family in India. He is in touch with them by telephone, and visits once every few years. He has assisted his father with funds for his medical treatment. However, Applicant has strong ties to the United States, which weigh in his favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. He has established his life in the United States by living and working here for more than 20 years. He, his wife, and his children are U.S. citizens. He credibly testified that his family in the United States is more important to him, and that his foreign family members have no influence over his life. I conclude that Applicant would choose his U.S. ties over his foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

Applicant has two bank accounts and one plot of undeveloped land in India. The bank accounts have a current value of about \$600 each. The land is now worth about \$125,000. His total assets in India are worth \$126,200. He has substantially more in assets and investments in the United States. His U.S. real estate is worth \$803,000, and his cash and investments total \$394,500. These U.S. assets amount to almost \$1.2 million. It is unlikely that his assets in India, which represent about a tenth of his U.S. assets, could be used effectively to coerce him. Mitigating condition AG ¶ 8(f) applies.

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 guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant chose to come to the United States to further his education. He has built his life here for more than 20 years. He has worked for U.S. companies for many years. Applicant, his wife, and children are all U.S. citizens. He has accrued substantial financial assets in the United States. Applicant's ties to India are outweighed by his ties to the United States. Applicant's history demonstrates that he has built strong ties here, and he is unlikely to jeopardize them by making decisions that would harm 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.h	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 allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge