



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



In the matter of:)	
)	
)	ISCR Case No. 11-14362
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On February 12, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 effective within the DOD for SORs issued after September 1, 2006.

On February 24, 2013, Applicant answered the SOR and elected to have his case decided on the written record. On April 16, 2013, Department Counsel submitted the Government’s file of relevant material (FORM). In the FORM, Department Counsel

requested administrative notice be taken of certain facts with respect to India.¹ The FORM was mailed to Applicant, and it was received on April 23, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. The case was assigned to me on June 21, 2013. I took administrative notice of pertinent facts about India that are included in the findings of fact.

Findings of Fact

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

Applicant is 52 years old. He was born in India. It is unknown when he moved to the United States. He married his wife in India in 1984. He attended college in the United States in 1988 and received a master's degree in 1990. He became a naturalized U.S. citizen in 2003. His wife is also a naturalized citizen. It is unknown when she became a naturalized citizen. Applicant has three children. The oldest was born in India in 1986 and is a naturalized U.S. citizen. Applicant's two younger children were born in the United States and are ages 22 and 17.

Applicant's father is a citizen and resident of India. He is a retired physician who does consulting work for a private hospital. His mother is deceased. Applicant's mother-in-law is a citizen and resident of India. She is a retired schoolteacher. His father-in-law is deceased. Applicant has monthly telephone contact with both of them and visits them about once a year when he travels to India.

Applicant has two brothers-in-law who are citizens of India and reside and work in Saudi Arabia. One works as a manager of a company and the other provides technical support for a computer company. Applicant maintains quarterly telephone contact with each of them and sees them about every two to three years either in India or the United States.

In the past ten years, Applicant has traveled to India on vacation about once a year to visit his family and friends. He intends to continue to travel to India, perhaps more frequently, due to the availability of airline travel to India. He continues to maintain close and continuing contact with his immediate family in India.

In 2010, Applicant purchased four apartments in India. In August 2011, at the time of his personal subject interview, the apartment building was under construction. Applicant estimated the value of the property at the time to be \$250,000. The current status of the property is unknown. Applicant stated in his answer to the SOR:

¹ Department Counsel's Administrative Notice request is included in the FORM.

I treat my investments in India as a part of a diversified investment and wealth management strategy. Currency and regional economy diversification is practiced by companies and individuals as a routine matter when assets rise to a level that one does not immediately need them. A further mitigation is that the assets in India (bank accounts, and real estate combined) amount to less than 10% of my overall assets.²

In response to the SOR, Applicant additionally stated:

India has had friendly ties with the U.S. and the likelihood of any hostilities between the two countries is small. It is impossible for me to envision any plausible situation in which my father's citizenship in India could possibly pose a security risk to the U.S. through me or in any other way. I am also quite certain that my loyalties to the U.S. will not be compromised.

He concluded his response to the SOR as follows:

I am quite certain and willingly affirm that the risks cited in the STATEMENT OF REASONS are not facts that will compromise my loyalty to the U.S.

Applicant has a bank account in India with approximately \$50,000 in it. Applicant did not provide any other information or supporting documents to show his overall net worth, or the extent and nature of his financial holdings in the United States.

India

India is a multi-party, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. Its political history since it gained independence from Great Britain in 1947 has included several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups in different parts of the country. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. India is a non-permanent member of the Security Council, and it seeks a permanent seat on the Security Council.

The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. Nevertheless, the United States recognizes that India is important to U.S. strategic interests. The strategic partnership between the United States and

² Answer to SOR.

India is based on shared values such as democracy, pluralism, and the rule of law. Since 2002, the United States and India have held a series of substantive combined exercises involving all military services. The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean. The United States and India share a common interest in fighting terrorism and in creating a strategically stable Asia. They are seeking to foster bilateral relations by establishing working groups to address five areas of mutual interest: (1) strategic cooperation; (2) energy and climate change; (3) education and development; (4) economics, trade, and agriculture; and (5) science and technology, health, and innovation.

India is identified in the 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, along with seven other countries, as being involved in criminal espionage and U.S. export controls enforcement cases. An earlier report lists India as being among the most active collectors of U.S. economic and proprietary information and highlights specific incidents wherein India engaged in attempts to acquire export-restricted products.

In its 2009-2011 Report to Congress, the Office of the National Counterintelligence Executive noted that some U.S. allies used their access to U.S. institutions to acquire U.S. economic and technological information. This was primarily achieved through aggressive tactics.

There are numerous instances of violations of U.S. export laws involving India. This highlights the desire of India or third parties in India to acquire U.S. technology regardless of the laws protecting it. Some of the technology illegally exported or attempted to be exported had military capabilities and the potential for being diverted for weapons of mass destruction or delivery of these weapons. The threat to the United States from foreign collectors, such as India, has continued unabated and targets a wide variety of unclassified and classified information.

The Indian Government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. The U.S. Department of State, notes the most significant human rights problems with police and security force abuses, were extrajudicial killings, torture, widespread corruption at all levels of government, and separatist, insurgent, and society violence. There are also serious human rights violations against women, including rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination. There is no evidence India uses torture or abuse against its citizens to extract economic intelligence.

In the past, India had a long-standing military supply relationship with the Soviet Union, and continues to obtain the majority of their military supplies from Russia. The

United States has differences with India over their nuclear weapons program. India has a bilateral strategic partnership with Iran. The United States is concerned that India will seek greater energy resources from Iran, a country that the United States is trying to isolate. India has refused to either sign the Nuclear Nonproliferation Treaty or accept The International Atomic Energy Agency safeguards on all of its nuclear material and facilities.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AGs 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 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;
- (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.

AG ¶¶ 7(a) and (e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each

individual family tie must be considered. The Applicant's foreign financial interest must also be considered.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."³

Applicant father and mother-in-law are citizens and residents of India. His two brothers-in-law are citizens of India and residents of Saudi Arabia. Applicant maintains regular contact with these relatives. Applicant has significant financial interests in India, including a \$50,000 bank account and a real estate interest that was valued at \$250,000 in 2010, prior to its development.

Despite its strategic ties, India is known to engage in economic espionage against the United States. India has a partnership with Iran and obtains the bulk of its military supplies from Russia, which are causes of concern. India is identified as one of the most active collectors of sensitive U.S. economic, industrial and proprietary information. There are documented cases of actual or attempted illegal export of U.S. restricted dual use technology to India. Its human rights record, terrorism activities, and problems with corruption in its government raise security concerns. Applicant's relationships with his family members and his financial interests in India create a heightened risk and potential conflict of interest. I find AG ¶¶ 7(a), 7(b), and 7(e) apply.

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

- (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;
- (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; and

³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(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 nature of a nation's government, its relationship with the United States, 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. India has strategic ties to the United States. However, it also has ties with Iran and Russia; it is an active collector of sensitive U.S. economic, industrial, and proprietary information; and there are cases of actual or attempted illegal export of U.S. restricted dual use technology. There are also concerns about its human rights record; terrorist activities; and corruption issues in its government.

Applicant father and mother-in-law live in India. His brothers-in-law live in Saudi Arabia. He provided minimal background information about them. Applicant travels annually to visit his father and mother-in-law. His regular contact with them and with his brothers-in-law is more than casual and is not infrequent. Without further information about these family members and Applicant's ongoing relationship with them, I am unable to conclude that his relationship with them does not create a security risk.

There is insufficient information about the current value of Applicant's financial holdings in India. When the apartment building he owns was being built in 2010, he estimated its worth at \$250,000. There is no updated information as to its current worth and whether Applicant leases the apartments and whether he is involved as a landlord. There is insufficient information about Applicant's holdings in the United States. At this juncture without additional clarifying information and based on information in the record, Applicant failed to establish that his financial interests in India are unlikely to result in a conflict and could be used to influence, manipulate and pressure him. I find none of the above mitigating conditions 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 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old. He received his master's degree in the United States. He has been a naturalized citizen of the United States since 2003. His wife and eldest child are also naturalized citizens, and his two younger children were born in the United States. The burden of persuasion rests with Applicant. He must provide evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him. This is in no way a comment on an applicant's loyalty to the United States or his patriotism, but recognizes that people may be unpredictable when faced with choices that may affect family members. At this juncture, there was limited information about Applicant's family and current financial interests in India. Therefore, the allegations cannot be mitigated. 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 Guideline B, 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 B:	AGAINST APPLICANT
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Subparagraphs 1.a-1.e:	Against Applicant
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Conclusion

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

Carol G. Ricciardello
Administrative Judge