



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



In the matter of:)
)
) ISCR Case No. 11-14590
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, a 1996 naturalized U.S. citizen, has strong family ties and substantial property interests in India. His interests in India could subject him to a risk of foreign influence or exploitation. Foreign influence concerns are not mitigated. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 20, 2011. On September 26, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline B (foreign influence).¹ Applicant answered the SOR on October 11, 2012, and requested a decision without a

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

hearing. The Government requested a hearing before an administrative judge on October 23, 2012. (GE 1) The case was assigned to me on November 6, 2012.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 8, 2012, convening a hearing for November 28, 2012. At the hearing, the Government offered exhibits (GE) 1 and 2. GE 1 was admitted without objection. GE 2 was marked for identification and considered for administrative notice purposes, but it was not admitted. Applicant testified, and he submitted exhibit (AE) 1, which was received without objection. DOHA received the hearing transcript (Tr.) on December 6, 2012.

Findings of Fact

Applicant admitted the SOR factual allegations. His admissions are incorporated in the findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor and considered his testimony, I make the following findings of fact.

Applicant is a 66-year-old architect working for a defense contractor. He and his wife were born, raised, and educated in India. In 1969, he was awarded his architect degree from an Indian university. His father paid for his education. Applicant never served in the Indian armed services and did not work for the Indian government. After receiving his architect degree at age 23, Applicant worked for an Indian company for five years. He then left India and worked for the Nigerian government for a period of 10 years. He then worked for one-year for the Saudi Arabian government.

In 1987, at age 40, Applicant immigrated to the United States with his wife and two daughters. Applicant married his wife in June 1972, and they have been married for 41 years. Applicant's wife worked as a teacher in India and Nigeria while Applicant worked there. Applicant and his wife became naturalized U.S. citizens in December 1996. According to Applicant, she is currently a senior employee at a large Government agency, and possesses a security clearance. Applicant and his wife have two adult daughters. The oldest daughter, age 39, was born in India, and the youngest daughter, age 32, was born in Nigeria. Both are naturalized U.S. citizens residing in the United States. Both daughters are married to Indian-born naturalized U.S. citizens. The oldest daughter has two children, both of whom were born in the United States.

Applicant attended a U.S. university and was awarded a master's in business administration (MBA) degree in June 1987. From December 1997 until March 2008, Applicant worked for a state government as an engineer. From June 2008 until October 2008, Applicant worked for an architectural international company performing a job in the Middle East. From November 2008 until March 2011, Applicant worked for another international company with offices in the Middle East. In June 2011, he was hired by his current employer, a government contractor, to work as an architect overseas. This is Applicant's first security clearance application.

Applicant's mother and younger sister are citizens and residents of India. His mother is 86 years old, and lives in the family home. She always worked as a homemaker. Applicant's sister lives with his mother, and she is not employed. Applicant's father is deceased. He served in the British army as a commissioned officer. He then worked in a senior position for the Indian government. Applicant's mother receives a pension from the Indian government. Applicant supplements her income on a regular basis. Applicant has no interest in his parent's home, and testified that his younger brother is entitled to the family home. Applicant's oldest sister is a citizen of India currently residing in South Africa.

Applicant owns a home in India, which he built approximately 35 years ago. He estimated the current value of his home is approximately \$100,000. Since immigrating to the United States in 1987, Applicant has traveled to India on a yearly basis to visit his mother and relatives in India. He stays in his home in India whenever he travels to visit his family in India. His most recent trip to India was in December 2012. He does not rent his home when he is not in India. Applicant has caretakers to oversee the house. Applicant has telephonic contact with his mother on a weekly basis. He has contact with his sister approximately once every two months.

Applicant has two brothers, both of whom are naturalized U.S. citizens. His younger brother is currently residing in India with his wife and daughter. He resided in the United States for approximately 12 years, but he has resided in India for the last three years. His brother's daughter is attending a specialized school in India. Applicant believes his brother intends to return to live in the United States when his daughter graduates from the Indian school. His brother is not working in India. He supports himself with the proceeds from the sale of his home in the United States. Applicant has telephonic and email contact with brother approximately once every two to three months.

Applicant has many extended family members who are citizens and residents in India. To his knowledge, none of his extended family members or his friends living in India worked for the government of India or are members of the Indian armed forces.

Applicant currently has approximately \$61,500 in three bank accounts in India. As the oldest male in his family, he is responsible for his family's wellbeing and he maintains his bank accounts to provide financial support to family members living in India, for insurance purposes, and to address any possible economic contingencies. In the United States, Applicant owns several properties, a residence with an approximate value of \$350,000; a rental property with a value estimated on \$300,000; and an apartment with an estimated value of \$450,000. These properties have mortgages higher than or close to the estimated current value of the properties. Additionally, Applicant testified he has approximately \$160,000 in two retirement plans.

Applicant considers himself to be a successful architect and engineer. He is proud of the good work he performed for a U.S. state agency for over 10 years. He is considering retirement in the near future. Before retiring, Applicant would like to pay back the United States for all the privileges and benefits he received in the United

States. He would consider it an honor to share his experience and good work on some of the fine buildings the United States is constructing in America or in other countries.

I take administrative notice of the following facts concerning India and its relations with the United States:

India is a stable multiparty federal, democratic republic with a bicameral parliament and a population of about 1.21 billion. The Indian government generally respects the rights of its citizens. The country's May 2009 elections were considered free and fair, despite scattered instances of violence. India has a vibrant civil society, a free press, and a robust democratic political system. Notwithstanding, corruption in the government and police forces, caste-based discrimination, and domestic violence and other abuses against women and children persist, despite criminal penalties for violations and government efforts to implement programs designed to empower members of the lower castes. Police and security forces often act with impunity, and serious abuses have been reported in criminal investigations and efforts to suppress domestic terrorism. Separatist and terrorist groups remain active in areas of conflict, such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt.

Anti-Western terrorist groups, including Islamic extremist groups on the U.S. government's list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. Recent incidents include bombings in February 2012 of an Israeli diplomatic vehicle in New Delhi, in September 2011 at New Delhi's High Court, and in July 2011 in crowded areas in Mumbai. Such threats to safety have led the U.S. State Department to advise U.S. citizens to practice good security when in India, and to avoid travel to areas of domestic conflict and to the India-Pakistan border.

India is a member of the United Nations with a non-permanent seat on the Security Council in 2011-2012, and it seeks a permanent seat on the Council. It has a long tradition of participating in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The United States welcomes India's role in Afghanistan while recognizing Pakistan's security interests in having a friendly western neighbor. Three full-scale wars and a constant state of military preparedness on both sides of the border have marked more than six decades of bitter rivalry between India and Pakistan. The United States strongly encourages an ongoing India-Pakistan peace initiative and remains concerned about the potential for conflict over Kashmiri sovereignty and "cross-border terrorism."

India continues to obtain the bulk of its imported military hardware from Russia, which had been India's major benefactor for the first four decades of its independence. As of 2000, India was listed as one of many countries actively engaged in economic intelligence collection and industrial espionage directed at the United States. As of

2008, India was identified as one of seven countries involved in criminal espionage and in the illegal acquisition of U.S. export-restricted products. There had been several incidents of international businesses illegally exporting, or attempting to export, restricted, dual-use technology from the United States to India. There is no evidence that India then or now tortures or abuses its citizens to extract economic intelligence.

The United States has also had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. Differences between the United States and India still exist over India's nuclear weapons programs; the slow pace of India's economic reforms, bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls. India's bilateral strategic partnership with Iran is also a concern. Between 2004 and 2006, the United States sanctioned Indian scientists and chemical companies for transferring nuclear weapons-related equipment and technology to Iran. India imported about \$10 billion worth of crude oil from Iran in 2009.

At the same time, the United States recognizes India as key to U.S. strategic interests. Since 2002, the United States and India have held combined exercises involving all military services. Both countries are 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.

The United States has been committed to establishing a strong, dynamic partnership with India. This is evidenced by the June 2005 ten-year defense pact (outlining planned collaboration in multilateral operations, expanded two-way defense trade, and increasing technology transfer opportunities); the July 2007 bilateral agreement for peaceful nuclear cooperation; the July 2009 "Strategic Dialogue" (calling for collaboration on energy, trade, education, and counterterrorism issues); and U.S. arms sales to India (In 2009, India signed a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer.). The United States is India's largest investment partner. Foreign assistance was about \$3 billion in 2006-2007, with the United States providing about \$126 million in development assistance.

India does not permit its citizens to hold dual citizenship. In 2006, India launched the Overseas Citizens of India (OCI) program. It is not a dual nationality program and does not grant Indian citizenship. A U.S. citizen who obtains an OCI card can travel to and from India indefinitely, work in India, study in India, and own property in India (except for certain agricultural and plantation properties). An OCI card holder is ineligible for an Indian passport or for Indian government employment and cannot vote in Indian elections.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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.

Applicant has foreign connections that present a potential risk of divided loyalties or undue foreign influence. Applicant's mother and sister are resident citizens of India, and he has a brother who is a naturalized U.S. citizen living in India. He also has extended family members who are citizens and residents of India. Additionally, he owns a home in India, valued at approximately \$100,000, and three bank accounts, valued at approximately \$61,000. Four disqualifying conditions under AG ¶ 7 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;
- (d) 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;

Applicant's relationship with his mother, siblings, and extended family members who are citizens and residents in India is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his relatives and friends living in India. He has close affection for his mother, siblings, and extended family members living in India. His communications with his immediate family members is frequent, and he provides financial support to his mother on a regular basis.

The mere possession of close family ties with family living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is

sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 government, the country is known to conduct intelligence collection operations against the United States, or the country has a significant problem with lawless elements or terrorists.

The United States and India's governments have improved ties since 2002. They have held a series of substantive combined exercises involving all military services, and the United States is providing defense technology to India. The relationship between the two nations is characterized as strong, strategic, increasingly collaborative, and transparent. India also has been a reliable ally of the United States in the fight against international terrorism. The country has taken steps since the Mumbai attacks to make it more difficult for insurgents or terrorist groups to operate with impunity. Human rights abuses in India largely involve harsh treatment of persons suspected of terrorist activity. India is not known to coerce its law-abiding citizens.

There is some evidence, however, to show that the relationship of the Indian government with the U.S. Government should raise a heightened security concern. Indian-U.S. interests are not aligned on several issues involving Pakistan and other countries. India relies on Iran and Russia for oil and gas supplies. Russia has historically been India's largest supplier of military hardware, and Indian scientists and chemical companies have been sanctioned by the United States in the past for transferring nuclear weapons-related equipment and technology to Iran. While U.S.-Russian relations have improved since the end of the Cold War, Russia also has been identified as a country that aggressively targets the U.S. for its economic, industrial, technological, and military secrets. And, Iran is a state sponsor of terrorism and avowedly anti-American. Furthermore, India and commercial entities in India have aggressively targeted U.S. economic intelligence in the past, as recently as 2008, although the Defense Department does not presently believe that India is exploiting U.S. technology.

Notwithstanding, an Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his family living in India.

There is no evidence that intelligence operatives from India or terrorists seek or have sought classified or economic information from or through Applicant or his family living in India. Nevertheless, his relationships with his family living in India create a potential conflict of interest. His relationship with them is sufficiently close to raise a security concern about his desire to assist them by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts

with his family living in India, raising the issue of potential foreign pressure or attempted exploitation. Furthermore, Applicant has substantial financial and property interests in India, which could subject him to an increased risk of foreign influence or exploitation. His financial and property interests in India raise a security concern. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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 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 interest in favor of the U.S. interest;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Applicant immigrated to the United States in 1987, at age 40, and he has lived in the United States for 25 years. He has a strong affection and sense of obligation to his mother and siblings living in India. He has frequent contact with them, and he travels to India on a yearly basis to be with them. He provides his mother with financial support. Applicant also owns a home in India, valued at around \$100,000, and he has approximately \$61,500, in three bank accounts in India. Applicant also has extended family members in India with whom he has infrequent contact.

Considering the evidence as a whole, Applicant is not able to fully meet his burden of showing there is “little likelihood that [his relationships with his relatives, friends, and associates who are Indian citizens and living in India] could create a risk for foreign influence or exploitation.”

AG ¶¶ 8(a) to 8(c), and 8(f) have limited applicability and do not mitigate the foreign influence concerns. The governments of India and the United States currently have good relations based on similar interests. However, 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. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in India. Although there is no evidence that Indian government agents, terrorists or criminals have approached or threatened Applicant or his family living in India because of his work for the United States, he is nevertheless potentially vulnerable to threats and coercion made against his family living in India.

A key factor in the AG ¶ 8(b) analysis is whether Applicant has “deep and longstanding relationships and loyalties in the U.S.” Applicant did well working for a state agency for a period of 10 years. He has been providing government contractors valuable services since 2008. His wife and two daughters are naturalized U.S. citizens. His wife works for a government agency, and according to Applicant, she possesses a security clearance. His two daughters are residents of the United States, and married to Indian-born, naturalized U.S. citizens. One daughter has two children born in the United States. Applicant has property interests in the United States (a home (with a substantial mortgage), two investment properties (with substantial mortgages), and two retirement plans). He credibly stated that his loyalty is to the United States, and that he intends to retire in the United States. To a certain extent, his actions show that “[he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Notwithstanding, Applicant was born in India, and he also has substantial financial interests in that country.

AG ¶ 8(d) does not apply because Applicant’s contacts and relationships with his family in India are not on behalf of the U.S. Government. AG ¶ 8(e) is not raised by the facts in this case and it does not apply.

In sum, Applicant’s connections to his family living in India remain very significant to him. Even though he is a naturalized U.S. citizen and he has been working for U.S. contractors, his connections to the United States are insufficient in light of his extensive personal, familial, and property interests in India. The mitigating information taken

together is insufficient to fully overcome the foreign influence security concerns under Guideline B.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

The whole-person factors weighing towards approval of Applicant's security clearance are significant; however, they are insufficient to warrant approval of his access to classified information. Applicant, 66 years old, immigrated to the United States in 1987, at age 40. He was awarded a master in business administration from a U.S. university that same year. He became a U.S. citizen in 1996. He worked for a state agency for 10 years. Since 2008, he has provided valuable services to several U.S. government contractors while posted in foreign countries. He intends to retire in the United States in the near future.

The factors supporting a continuing foreign influence security concern and denial of Applicant's security clearance because of Applicant's connections to India are more significant than the factors weighing towards approval of his access to classified information. Applicant was born, raised, and educated in India. Applicant's mother and one sister are citizens and residents of India. Applicant has strong feelings of affection and obligation to his family. He communicates with them frequently, and provides them with financial support. He owns a home in India, with a value of around \$100,000 that he built many years ago. He stays in that property whenever he travels to India. Applicant also has three bank accounts in India with approximately \$61,500.

A Guideline B decision concerning India must take into consideration the geopolitical situation in India, as well as the dangers existing in India.² Since 2002, the United States and India have been improving their relations, and both countries are committed to establishing a strong partnership. This is evidenced by the 2005 ten-year defense pact, the 2007 bilateral agreement for peaceful nuclear cooperation, the 2009 Strategic dialogue for collaboration on energy, trade, and counterterrorism issues, the joint participation in military exercises, the increase in sales of military technology, and the fact that the United States is India's largest investment partner. India is a member of the United Nations and participates in peacekeeping operations. The United States and India share many interests, such as peace in the region and fighting terrorism.

However, even when all these factors are weighed, there are areas of concern such as India's relationship with Russia and Iran, India's involvement in criminal espionage, its illegal acquisition of U.S. export-restricted products, its lack of protection of intellectual property rights, and its trade of dual-use technology. Although there is no evidence that India has torture or abused its citizens to extract economic intelligence,

²See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

there continues to be a risk that lawless Indian elements will attempt to coerce family members of security clearance holders to obtain classified or sensitive information. On balance, Applicant's immediate family members in India and his substantial property interests in that country continue to be a security concern. Applicant has not fully mitigated the foreign influence security concern.

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.f:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge