



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



In the matter of:)
)
-----) ISCR Case No. 12-00872
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

07/18/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

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

Statement of the Case

On August 27, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 11, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 10, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2013, setting the hearing for June 5, 2013. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1. In the form of a request for administrative

notice regarding the country at issue, the Government also offered a Hearing Exhibit (HE) marked as HE 1. Both were accepted without objection. Applicant testified, introduced one witness, and offered seven documents, which were received without objection as Exs. A-F. The record was closed upon receipt of the hearing transcript (Tr.), which was received on June 13, 2013.

Procedural Ruling

I take administrative notice of facts relating to India. They are set forth in documents offered by Department Counsel, marked as HE 1. The facts administratively noticed are those limited to matters of general knowledge and not subject to reasonable dispute. They are set forth below, following the Findings of Fact.

Findings of Fact

Applicant substantially admitted, with explanations, the seven allegations raised. Her supervisor appeared on behalf of their employer to offer a highly positive character assessment of Applicant. She was described as an exceptional worker and wholly reliable employee with unique skills and talents. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 34-year-old software test engineer. She was born in India in 1978. In India, she earned her bachelor's degree in computer science and, in 2001, married. After her wedding, she came to the United States with her husband on a dependent's visa. It was her dream to continue her education in the United States and to raise children in this country. She enrolled in a master's degree program in information technology, which she ultimately completed in the mid-2000s. She became a U.S. citizen in 2008. Since that time, she has had two children, now aged five and three. Both children are attending a local pre-school program and are active in local outdoor activities. As their parents, Applicant and her husband are also active with several related community organizations, youth activities, and neighborhood groups.

During her career, Applicant has worked for multiple U.S. government agencies. They have been mostly engaged in domestic affairs. Applicant held agency-specific public trust clearances with each of these agencies.

In immigrating to the United States, Applicant left behind several family members in India. Applicant's father and mother, aged 63 and 60, respectively, remain as citizens and residents of India. They are in good health. Applicant speaks with them a couple of times a week by telephone. Neither have any contacts with the Indian government or military. Rather, Applicant's father is a financial manager who works for a private construction firm, and her mother has always been a homemaker. Applicant also has two brothers. They are residents and citizens of India. They work in the private sector as an engineer and an architect, respectively. Neither has had any association with the Indian government or military. They maintain occasional contact by telephone or email. Applicant's in-laws are likewise citizens and residents of India. Neither has had any

nexus to the Indian government or military. Her father-in-law is a retired farmer and her mother-in-law is a homemaker. Applicant has occasional contact with them by telephone.

In 2010, one of Applicant's brothers offered to sell a residential apartment in a building his company was constructing for \$60,000. (Tr. 27) The value of the property has varied over the past two years due to differences in real property projections caused by construction delays, variances in the local economy, and fluctuations related to dollar valuation. At the time, this price was considered to be at a highly favorable, sub-market rate. The purchase was made in order to gift the apartment to Applicant. The building is still in the construction phase, with a completion date not expected until at least 2015. Upon completion of the project, it is expected that the unit will be sold at a profit to be shared by those involved. It has always been meant to be an investment for turnaround sale upon completion of the project. (Tr. 36) Such gifts of investment real property are customary in India between parents and children. (Tr. 26) A gift of similar value was also purchased by Applicant's father for her younger brother.

Applicant also owns eight acres of land that were conveyed to her on the occasion of her wedding. The gift was part of a common tradition in India in which parents gift all or some of their property to their children. This modest parcel of a larger property was previously gifted to Applicant's mother, in whose family the acres have been held and reconveyed within the family for generations. It consists of rice paddies. On paper, Applicant's parcel has a value of about \$220,000. The land, however, is not intended for sale. Applicant technically derives a profit share when the crop is sold. In reality, however, she derives no actual income from the property, despite the fact it generates about \$2,000 a year in profits. Instead, all realized financial profits are reinvested in the maintenance of the land, crop, and a costly irrigation system. The land and the crops are managed by Applicant's father. Applicant is willing to dispose of the property despite Indian custom. (Tr. 36) She considers it to be akin to an in-trust holding. She has never derived any monetary income from the land or its crop, nor has she expended any sum to maintain it. (Tr. 30)

Applicant has a bank account in India with an approximate balance of \$1,200. She previously tried to close the account. (Tr. 31) The original cash balance was received as a wedding gift from her father-in-law in 2001, along with some stocks. Her father-in-law monitored the holdings. After receiving the SOR, Applicant asked him to sell the stocks, any foreign assets, and close the bank account. All of her stocks and foreign securities, amounting to about \$26,000, were liquidated. The stocks were sold at a loss and the balance of the bank account reduced to the legal minimum of \$1,200. (Ex. B; Tr. 31-32) By law, however, that account cannot be formally closed without her physically closing the account in person. In the past decade, Applicant has visited India about four times. She has no plan to visit there this year. On her next visit, however, she plans to withdraw the \$1,200 balance and close the account. That balance (\$1,200) represents all of Applicant's current non-real estate interests abroad. She derives no income from abroad. (Tr. 33) She has no other foreign interests except for those noted above.

Applicant cancelled her Indian passport when she became a U.S. citizen. Her only Indian contacts are the above-referenced six individuals. Neither she nor her spouse has any interest in returning to India to live.

Applicant and her husband are happily entrenched in the social interactions related to their neighborhood and community. They participate in regular barbeques and picnics in their area. Applicant's husband is on a community board. They have invested all of their income in the United States. They own their own home. They maintain checking, savings, and 401k accounts here. They lost about \$250,000 in 2008 when the market shifted. (Tr. 34) Their current domestic investments exceed \$800,000. They do not follow Indian politics or contribute to Indian charities. They look forward to having their children educated at United States-based colleges. Applicant notes that she and her husband have worked hard to "complete our dream, which is living a happy, healthy life in [the] U.S." (Tr. 34)

Administrative Notice

I take administrative notice of the following facts, as derived from HE 1, with regard to the Republic of India (India). 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; it 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 active 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

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn 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 to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

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 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;
- (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 has ties of affection for her parents, brothers, and parents-in-law, who are citizen-residents of India. She is in touch with them on a regular basis. She has visited India four times in the past decade. Although her foreign bank account has a comparatively negligible balance, she has notable real estate investments in India. Such ties and holdings constitute a heightened risk of foreign influence. Disqualifying conditions AG ¶¶ 7(a), (b), and (e) apply.

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 interest 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's parents, brothers, and parents-in-law all live in India. The nature of the foreign country must 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 Indian government would exploit Applicant or her relatives based on their relationship. It is unlikely that Applicant would have to choose between the interests of family in India and the interests of the United States. AG ¶ 8(a) applies.

Applicant has strong ties to the United States, which weigh in her favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. She has lived in the United States for over a decade, graduated from a U.S.-based master's program, and started a family. She had developed a successful career here. She and her husband are active within their community and take pleasure in raising their children in the United States. They enjoy their home and neighborhood. Although she speaks with her parents, brothers, and in-laws, none of these family members have connections with the Indian government or military. Her relationships with these kin appear to have naturally diminished as her family life becomes more entrenched in the United States. Applicant credibly states that she has no plans to move from the United States and that she places U.S. interests above those in India. For example, she willingly liquidated over \$25,000 in foreign investments, reduced her bank balance to as low a sum as legally permissible without personally appearing in India to

close the account, and has shown that, at most, she only has an unrealized investment interest in the properties gifted to her; they do not represent interests for which she has applied her own funds or on which she is financially dependent. At present, her potential Indian holdings in the rice paddies and an incomplete building represent about \$280,000. In contrast, her realized domestic holdings exceed \$800,000, a value complemented by successful careers, social lives, and an established, happy family lifestyle. In light of these considerations, I conclude that Applicant would choose her strong U.S. ties over her foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 a 34-year-old software test engineer working for a defense contractor. Over the past decade, she has worked for multiple domestic agencies, where she maintained public trust clearances without incident. Since coming to the United States, she has availed herself of our higher educational institutions and employment opportunities. She has started a family and is raising two children in a home they share with her husband. Her holdings here in the United States are in excess of \$800,000. They complement the settled, happy lifestyle and home Applicant and her husband maintain for both their children and their own comfort.

At issue in the SOR were various relatives and holdings in India. None of the relatives at issue have any nexus to the Indian government or military. There is no evidence that any of them could be used by a foreign power against Applicant. This is especially true in the absence of evidence that India uses its citizens to gather secure information from family living abroad. As for the holdings, Applicant liquidated her investments and reduced her bank balance to a negligible sum. Remaining are two properties which, although they have financial value, are financially in limbo in terms of value. The apartment building is not expected to be completed for a few years. The rice paddies are a ceremonial bequest, a portion of her mother's family's holdings yielding no real financial or other benefit. Such holdings are minimal compared to the immediately and conveniently accessible investments, income, and lifestyle now based in the United States.

Overall, the record evidence leaves me with no doubts about Applicant's eligibility and suitability for a security clearance given the unique facts presented in this case. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence guideline.

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: FOR APPLICANT

Subparagraphs 1.a-1.g: 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 grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge