



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



In the matter of:)	
)	
)	ISCR Case No. 12-02702
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Nicole A. Smith, Esq.

01/17/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by her family members who are citizens and residents of India. Clearance is granted.

Statement of the Case

On September 10, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the 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 (AG).

Applicant answered the SOR on October 5, 2013, admitting all of the allegations and requesting a hearing. On November 21, 2013, the case was assigned to me. On December 4, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a notice

of hearing scheduling the case for December 16, 2013.¹ I held the hearing as scheduled and received four Government exhibits, marked as Government Exhibits (GE) 1 through 4, and three Applicant exhibits, marked as Applicant's Exhibits (AE) A through C. The transcript was received on December 24, 2013.

Evidentiary Rulings

Department Counsel requested that I take administrative notice of facts about India encapsulated within 14 documents marked as Hearing Exhibits (HE) I through XIV. I took administrative notice of the facts in HE I through IV and VIII through XIV. At the hearing, I did not take administrative notice of the facts set forth in HE V through VII. (Tr. 29-33) However, upon reconsideration, I have decided to take administrative notice of the facts set forth in HE V through VII.

Findings of Fact

Applicant is a 26-year-old single woman. She has a bachelor's of science degree in information technology and a bachelor's degree in finance. Currently, she is working towards a master's degree in information technology. (AE A) She lives with her parents.

Since March 2010, Applicant has worked for a government contractor as a technology consultant. Her job duties involve systems integration. Applicant is highly respected on the job. According to her immediate supervisor, her professional accomplishments are "highly valued." (AE C at 3) According to her "feedback provider," she has a strong work ethic and an impressive technical background, together with a keen ability to manage change. (AE B at 3) She has also contributed significantly to firm initiatives involving social causes and community outreach. (AE C at 3)

Applicant was born in India. Her family immigrated to the United States in 1993, when Applicant was six years old. (Tr. 40) Applicant became a naturalized U.S. citizen in 2006. (GE 1 at 7) All of her immediate family members are also naturalized U.S. citizens and live in the United States. Her father is a retired restaurateur and her mother is an occupational therapist. (Tr. 41) Her brother is an investment banker.

Applicant has several relatives who are Indian citizens and relatives including a grandmother, four uncles, three aunts, and two cousins. None of her relatives except her cousins speaks English. Instead, they speak either Hindi or Punjabi. Applicant speaks no Punjabi, and minimal Hindi. She characterizes efforts to engage in any conversations with her relatives beyond the exchange of rudimentary pleasantries as "hilarious." (Tr. 46-47) Before completing the security clearance application, Applicant did not know the names of her grandmother, aunts, or uncles, and had to ask her mother for assistance to complete the section requiring the disclosure of relatives. (Tr. 47)

¹Applicant consented to the hearing date, waiving her right to 15-days notice of hearing. (DODD 5220.6, January 2, 1992, E3.1.7)

Applicant's grandmother is a homemaker. Applicant talks with her approximately twice per year. (Tr. 50) Because her grandmother only speaks Punjabi, their communication is extremely limited.

Applicant's uncle (U1) is a family doctor.² They talk approximately twice per year. These conversations occur if U1 calls Applicant's mother, and Applicant happens to be at home. (Tr. 52)

U2 owns a small business that manufactures wheels for chairs. (Tr. 55) Before completing the security clearance application, Applicant did not know his occupation. Because of their language differences, communication is rare. (Tr. 55)

U3 works for an Indian consulate in the United States. Applicant does not know his job title or what his work entails. (Tr. 58)

U4 is retired. (Tr. 59) His occupation before retiring is unknown from the record. Applicant talks with him once or twice per year.

Applicant's aunt (A1) is a retired secretary. Applicant is acquainted with her through social media. (Tr. 56) Because of their language barrier, their social media contact is limited to the exchange of pictures online. Applicant had to ascertain A1's occupation from her mother. (Tr. 56)

Applicant's other two aunts (A2 and A3) are her father's sisters. Her contact with these relatives is less frequent than her contact with her maternal relatives. Applicant does not know A2's occupation. She has not talked to her since 2002. (Tr. 61) A3 is a homemaker. Applicant talks with her approximately once or twice per year. (Tr. 62)

Both of Applicant's cousins speak English, and they are of Applicant's generation. Consequently, she communicates with them more often than she does with her older relatives. C1 is in dental school. During a U.S. visit, she stayed with Applicant's family. (Tr. 63) C1 and Applicant exchange e-mail messages once per week. (Tr. 63) C2 is a culinary student. She communicates with him through social media approximately once a month. Their conversation is typically limited to exchanging questions about food and pictures of food online. (Tr. 65)

Applicant last visited India in 2012. She attended a cousin's wedding and visited all of her relatives except her paternal aunts. (Tr. 68-69) She had previously travelled to India as a teenager in 2002.

Applicant has approximately \$25,000 invested in a 401k account, and less than \$20,000 in a savings account. (Tr. 43, 72, 74) Her finances are all based in the United States. (Tr. 74)

²I will refer to successive uncles discussed later in the Decision as U2, U3, and U4. Similarly, I will reference other extended family members in this manner. (i.e., aunts– A1 through A3; and cousins–C1 and C2)

Administrative Notice

India is a multiparty, parliamentary, secular democracy with a population of 1.2 billion. (HE IX at 7). United States and Indian relations have strengthened during the past ten years. (Item IX at 15) Before then, their relationship was strained because India had developed nuclear weapons in contravention of international conventions.(HE XI at 15) In 2006, Congress passed the Henry J. Hyde United States - India Peaceful Atomic Cooperation Act, which allows India to buy U.S. nuclear reactors and fuel for civilian use. (HE IX at 16)

The U.S. Department of Commerce Bureau of Industry and Security (BIS) maintains an Entity List composed of end-users who have been determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. (15 C.F.R. § 744.11(b)) The BIS also regulates dual-use technologies that may have military applications such as electronic sensors. U.S. firms seeking to conduct business with organizations on the Entity List must obtain licenses from the BIS and cannot export such technologies to businesses on the Entity List without prior authorization. There is a “presumption of approval” for license applications to sell dual-use technologies to the Indian entities on the list. (15 C.F.R., Pt. 744, supp. 4)

Between 1999 and 2002, a U.S.-based company exported technology without prior authorization to an Indian company that required prior authorization. (HE VIII) On November 14, 2011, an employee of a U.S. company was arrested and charged with stealing proprietary information from his employer and providing it to a relative in India who was setting up a competing company. (HE IV at 3) In March 2008, the owner of an international electronics company pleaded guilty in a U.S. court to conspiring to illegally export 500 controlled microprocessors and other electronic components to government entities in India that participate in the development of ballistic missiles, space launch vehicles, and combat jets. As part of the conspiracy, the defendant was working with an Indian government official. (HE IV at 7) On September 9, 2008, a U.S. grand jury indicted an Indian national and an Indian corporation on charges of illegally supplying the Indian government with controlled goods and technology without the required licenses. (HE IV at 11)

India is one of the most terror-afflicted countries in the world (HE XII at 2). In 2011, India increased its counterterrorism capacity and cooperation with the international community. (HE XI at 2) The Indian government has proposed a new agency to create national-level capability to investigate and prosecute terrorism. Also, it has amended some existing laws to strengthen security and law enforcement agencies in fighting terrorism. (HE XII at 2)

India is a multiparty, federal, parliamentary democracy with a bicameral parliament. (HE XIII) The Indian government is troubled by a lack of accountability because of weak law enforcement and an underfunded court system. There is a history

of arbitrary arrests and detention. The most recent presidential elections were considered free and fair. (HE XIII)

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, "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 the United States interests, or is vulnerable to pressure or coercion by any foreign interest." Moreover, "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 ¶ 6)

India is a United States ally with shared democratic values. The relationship between the two countries has grown significantly over the past ten years. However, the United States remains concerned about India's ability to keep dual-use technology from

falling into the wrong hands. Moreover, there have been episodes over the past five years of businessmen exporting sensitive technology to India in circumvention of U.S. law governing transfer of such technology. In one case, an unindicted co-conspirator was an Indian government official. Consequently, Applicant's relatives who are Indian citizens and residents trigger the application of AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

When Applicant and her family moved from India, she was six years old. Before completing the security clearance application, she did not know either her grandmother, aunts or uncles in India by name. Her minimal understanding of Hindi and Punjabi limits her ability to communicate with her foreign relatives. Their conversations are restricted to an exchange of pleasantries, at most, twice per year. AG ¶ (c), "contacts or communication with foreign relatives is so casual or infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation," applies.

Although Applicant's relationship with her cousins is casual, it is not infrequent. Nevertheless, considering the innocuous nature of their communication, the depth of Applicant's contacts in the United States, and the length of time Applicant has lived in the United States, I am persuaded that AG ¶ 8(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," applies. Applicant has mitigated the foreign influence security concern.

Whole-Person Concept

Under the whole-person concept, 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.

In reaching my decision, I considered Applicant's dedication to community service and her favorable employment references.

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.d: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge