



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



In the matter of:)
)
) ADP Case No. 12-03286
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant’s trustworthiness determination.

On 5 December 2012, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline B, Foreign Influence.² Applicant timely answered the SOR, requesting a hearing before the

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, and hearing exhibits (HE) I-II.

²DoD acted under the 9 April 1993 memorandum of agreement between the Composite Health Care System Program Office (CHCSPO), DOHA, and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) for DOHA to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987. ADP cases are adjudicated under the policies and procedures established by DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the DoD for SORs issued after September 1, 2006.

Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 12 February 2013, and I convened a hearing 11 April 2013.³ DOHA received the transcript 18 April 2013.

Findings of Fact

Applicant admitted the allegations of the SOR 1.a, but denied the allegations of SOR 1.b.⁴ She is a 26-year-old consultant employed by a defense contractor since October 2008. She has not previously had a trustworthiness determination, but had interim access granted in December 2008 and May 2009, on different contracts with her current employer.

Applicant was born in India in February 1987, and immigrated to the U.S. with her parents and older brother shortly thereafter. Their purpose was to obtain legal permanent resident (LPR) status for themselves, but particularly for their children because of the educational opportunities available in the U.S. The family obtained LPR status in 1991. They moved to the United Arab Emirates (UAE), where Applicant's father ran a perfume business. Her mother was a homemaker, occasionally helping with the business.

From August 2000 to May 2004, Applicant attended highschool in the UAE. After graduating from highschool, Applicant returned to the U.S. to attend college, from which she graduated in August 2008. In November 2009, Applicant became a naturalized U.S. citizen, and obtained her U.S. passport. Her brother is also a naturalized U.S. citizen. India does not recognize dual citizenship, and Applicant states she renounced her Indian citizenship when she became a U.S. citizen.

Applicant had typical college employments during her school years, including an internship, but was unemployed after the internship ended in December 2007, through her graduation, until she obtained her current job in October 2008. When Applicant first got her job, her employment site was more than two hours' drive from her home. Consequently, from October 2008 to December 2009, she resided with two old family friends from India who lived much closer to her work. Applicant has known the husband all of her life, as he was good friends with her parents. She got to know the wife through the husband. They were residing in the U.S. because the husband was on a diplomatic assignment to the Indian embassy. His wife was a professor at an Indian university. During her time in the U.S., she did some contract work for the World Bank. They returned to India in October 2010. She resumed her job at the university; he is

³Through administrative oversight, the SOR failed to inform Applicant of the correct authority for the DoD's action. I corrected that shortcoming at hearing (Tr. 60-66), and, because the adjudicative guidelines are identical for clearance and trustworthiness determinations, continued the hearing to its conclusion.

⁴Based on Applicant's answer, Department Counsel withdrew the original SOR 1.b and replaced it with the substantive allegations in SOR 1.c, slightly modified to clarify Applicant's relationship to the foreign persons (Tr. 11-12).

employed by the Indian government. Applicant speaks to them infrequently by telephone, and visits them if she is in India.

Applicant's parents are citizens of India, residing in the UAE, where they run a perfume business. As mentioned above, they are also LPRs of the U.S. Her father's business connections are largely in Italy and France, although he hopes to expand his business to the U.S. They also plan to return to the U.S when they retire. Neither of them have ever had any connection to the Indian government.

Applicant reported her foreign relatives as required on her clearance application (GE 1). She discussed her contacts with her foreign relations extensively during a subject interview in January 2011 (GE 2). She usually visits her parents in the UAE once a year in December, and they visit her in the U.S. at least once a year. She speaks with them regularly by telephone. Their business is self-sustaining, and she does not provide them with any financial support. She has no financial or property interests in either India or the UAE. What financial interests she has are in the U.S.

India is a stable multiparty federal, democratic republic with a bicameral parliament and a population of about 1.21 billion. The central government has broad administrative powers in relation to its states. The Indian government generally respects the rights of its citizens. Recent elections have been free and fair, despite scattered instances of violence. India has a vibrant civil society, free press, and a robust democratic political system. Yet, endemic government and police corruption, 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. Because of these threats to safety, the U.S. State Department has advised 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's size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and of the Non-Aligned Movement. Long a member of the United Nations, the country has a non-permanent seat on the Security Council in 2011-2012, and seeks a permanent seat on the Council. It has long participated in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The rapidly growing software sector in India is boosting service exports and modernizing the country's economy, although excessive regulatory and bureaucratic structures and corruption present obstacles to growth. The United States, India's largest investment partner, strongly supports the market reforms undertaken by India since 1991 and urges further liberalization of trade and investment barriers. Foreign assistance was about \$3 billion in 2006-2007, with the United States providing about \$126 million in development assistance.

Since 2000, India has been listed as actively engaged in economic intelligence collection and industrial espionage directed at the United States. However, 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 due to inadequate infrastructure, cumbersome bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls, and India's bilateral strategic partnership with Iran.

At the same time, these differences no longer dominate the United States' attitude toward India. The United States recognizes India as key to strategic interests. Since 2002, the United States and India have held increasingly substantive 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 Bush and Obama administrations have been committed to establishing a strong, dynamic partnership with India. In June 2005, the two countries signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. In July 2007, the United States and India reached a historic milestone in their strategic partnership by completing negotiations on a bilateral agreement for peaceful nuclear cooperation. In July 2009, the Obama Administration launched a "Strategic Dialogue" calling for collaboration on energy, trade, education, and counterterrorism issues. Major U.S. arms sales to India are underway. In 2009, India signed a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer, setting a new record for the largest-ever U.S. arms transfer to India. During a recent visit to India in June 2012, Secretary of Defense Panetta cited the strong, strategic, increasingly collaborative, and transparent relationship between the two countries as the foundation for a new defense strategy guiding the U.S.' military rebalance in the Asia-Pacific region. He called for already strong mutual participation in military exercises to become more regular and complex. As evidence of the U.S.' commitment to providing the best defense technology possible to India, Secretary Panetta pointed to work by the Obama Administration to reform export controls. He called for India to modernize its own regulations in defense procurement and nuclear liability legislation.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to

sensitive information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to access sensitive information, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests 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.⁵

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain sensitive information and/or is associated with a risk of terrorism.⁶ Evaluation of an individual's qualifications for access to sensitive information requires careful assessment of both the foreign entity's willingness and ability to target sensitive information, and to target ex-patriates who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise trustworthiness concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁷ Further, trustworthiness concerns may arise through 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

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶AG ¶ 6.

⁷AG ¶ 7 (a).

information.⁸ In addition, security concerns may be raised by 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.⁹ Finally, failure to report, where required, association with a foreign national may raise trustworthiness concerns.¹⁰

Concerning potential mitigating factors, AG ¶ 8.(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.,” largely mitigates the Applicant’s circumstances regarding India.

While the ongoing risk of terrorist activity by rogue elements in India raises safety issues addressed by U.S. Government travel warnings, there is no evidence that terrorist elements use violence as a means of obtaining sensitive information. Similarly, the Indian government and companies are active collectors of such information, but there is no evidence that they use coercive means or target ex-patriate citizens or former citizens to obtain this information. Further, India is not known to target the kind of data processing information Applicant is expected to have access to.

Applicant has ongoing contact with her parents in the UAE. The Government asserted no security concerns relating to the UAE. Further, while Applicant’s parents remain Indian citizens, they also remain LPRs of the U.S., where they plan to immigrate eventually. They have never had any connection to the Indian government, and it is difficult to imagine how India could influence Applicant through her parents in the UAE.

Applicant’s contacts with her family friends are mitigated by AG ¶ 8.(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. It is over two years since Applicant lived with them, and they are no longer in a position to influence Applicant’s actions.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8.(b), where “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.” Applicant’s sense of loyalty or obligation to her parents cannot be characterized as “so minimal” for the same reasons that her contacts cannot be

⁸AG ¶ 7 (b).

⁹AG ¶ 7 (e).

¹⁰AG ¶ 7 (f).

considered “casual and infrequent.” Yet, there is no similar sense of loyalty to a foreign group, government, or country. Further, her parents live in the UAE, they intend to return to the U.S. once their time in the UAE is over, and India is not known to seek sensitive information through coercive means—and in any event does not appear to target data processing information like Applicant will have access to.

After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Accordingly, I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-b:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position granted.

JOHN GRATTAN METZ, JR
Administrative Judge