



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



In the matter of:)	
)	
)	ISCR Case No. 12-03519
)	
Applicant for Security Clearance)	

Appearances

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

01/31/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

On October 10, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).¹ Applicant signed his notarized Answer to the SOR on October 12, 2012, in which he admitted the allegations under Guideline B. He also requested a hearing before an administrative judge.

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) was prepared to proceed on November 14, 2012, and the case was assigned to me on November 29, 2012. DOHA issued a Notice of Hearing on December 18, 2012 for a hearing on January 17, 2012. At the hearing, I admitted Government Exhibit (GE) 1 and

¹ See Executive Order 10865 and DoD Directive 5220.6. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

Applicant Exhibit (AE) A without objections. I granted Applicant's request to hold the record open to receive additional documentation. He timely forwarded three documents, which I admitted without objection as AE B through D. Department Counsel's email response to Applicant's post-hearing submission is included as Hearing Exhibit (HE) III (HE I and II are discussed below). DOHA received the transcript (Tr.) on January 24, 2013.

Procedural Rulings

Based on the evidence presented at the hearing, I granted Department Counsel's motion to amend the SOR (Tr. 58-59) to add the following allegation under Guideline B, paragraph 1:

d. You have a bank account in [bank name] in India.

Both Department Counsel and Applicant requested I take administrative notice of facts related to India. Administrative or official notice is the appropriate type of notice used for administrative proceedings.² The most common basis for administrative notice at ISCR proceedings is notice of facts from government reports. I take administrative notice of facts relating to India set forth in documents offered by Department Counsel, marked as HE I. Applicant requested administrative notice of a document describing U.S.-Indian relations, marked as HE II. However, Applicant's document is a print-out of information downloaded from a Wikipedia website. It relies on numerous sources, some of which are U.S. Government agencies such as the State Department. Other sources include U.S. and foreign news organizations and commercial news magazines. I take administrative notice only of information with citations to U.S. Government sources.³

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 39 years old and single. He was born in India, where he earned a bachelor's degree in chemistry and a master's degree in computer science. He worked in India for about one year in a private firm, and did not serve in the Indian military. He came to the United States in 1997 on an H1-B work visa, at the age of 24. He

² See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986).

³ See, e.g., ISCR Case No. 01-26893 at footnote 2 (App. Bd. Oct. 16, 2002); ISCR Case No. 03-21434 at 3-4 (App. Bd. Feb. 20, 2007).

renounced his Indian citizenship when he became a U.S. citizen in September 2008. He testified that one reason he applied for U.S. citizenship was to be able to participate in the U.S. system, and he voted in the 2008 presidential elections. He had never voted in Indian elections. Between 2000 and 2006, he was a senior information technology analyst at a hospital. He was a managing consultant at a private corporation from 2006 to 2010. He has worked as a manager for a defense contractor since December 2010.⁴ (GE 1; AE A; Tr. 22, 30-31, 48)

Applicant's parents are citizens and residents of India. His retired father is 71 years old. Previously, he held a clerical position in an Indian military agency for about 30 years. He retired from that position approximately eight years ago, and does not maintain contacts with his former co-workers. He did not serve in the Indian military. Applicant's parents have property and financial accounts in India. However, Applicant has no inheritance interests in the accounts or other property because his sister, who lives in India and cares for their parents, will inherit them. Applicant's mother, 65 years old, has always been a homemaker. Applicant speaks with his parents weekly. They first visited Applicant in the United States in 2004. At the time, Applicant applied for a 10-year visa that allows them to have multiple entries. Applicant visits them in India about once per year. However, in 2011, he traveled there three times because his father suffered a stroke. He last visited them in December 2012. However, he plans to have them apply for green cards to stay in the United States for longer periods so that he will not need to travel to India to see them. (GE 1; AE A; Tr. 19-21, 31-40)

Applicant's two sisters and one brother-in-law are also citizen-residents of India. One sister is 40 years old and holds a master's degree in English. She teaches English and French in a high school. She has no connection to the Indian military or the Indian government. Applicant speaks with her about once every other month, and sees her when he visits India. Her husband is a finance manager for a U.S. company in India. He did not serve in the Indian military and has no connections to the Indian government. (GE 1; AE A; Tr. 19-21, 40-43)

Applicant's second sister is 38 years old and holds a master's degree. She is a manager at an insurance company, which operates as a private-government partnership. She does not own property, but does have bank accounts. However, Applicant has no ownership interest in them. Applicant talks with his second sister about every other month, and sees her during his visits. (GE 1; AE A; Tr. 19-21, 43-45)

Applicant has a bank account in India. He opened it in 1997, at a time when banks were government-owned. He opened the account so that he could deposit funds for his parent's use. Applicant deposited more in the account in the 1990s, when his parents were experiencing financial difficulties. The highest balance was between \$5,000 and \$6,000; the current balance is approximately \$1,500. Applicant used the account to pay for his sister's wedding. He also maintains it to provide support to his

⁴ Applicant held an Indian passport, which is currently expired. He surrendered it to his company's facility security officer when he applied for the security clearance. (AE A; Tr. 28-29, 53-56)

parents if they need it. Originally, he deposited more funds to the account, but in the past five years, he has only made deposits to it on an as-needed basis, about once per year. He does not own real estate in India. Applicant has owned three properties in the United States since he bought his first house. His current home, purchased in 2007, is worth \$285,000. His savings, checking, and trading accounts total approximately \$360,000. (AE A; Tr. 21, 23, 45-49, 51-54)

Applicant's 2011 performance evaluation indicates he has strong leadership skills and solid subject matter knowledge. He has received monetary awards, an outstanding performance award, and a certificate of appreciation for his work with a client. A friend and former roommate who has known him for 16 years submitted a character reference. He knows Applicant's parents and one sister. Applicant's parents have never asked him about or expressed any interest in political issues. He is aware of Applicant's father's medical problems. In his opinion, Applicant came to the United States because he values the way of life, and the equal opportunity it offers. He is confident in recommending Applicant for a security clearance. (AE B, C, D)

Administrative Notice

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, and 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 corruption occurs at all levels of government.

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.⁵ 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 are committed to political freedom

⁵ Cases included in the Government's documents occurred from 2004 to 2008. (HE I)

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 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

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the (AG).⁶ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁷ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁸ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The "clearly consistent with the national interest"

⁴ Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

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; 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 has ties of affection and obligation to family members who are citizen-residents of India. His contact with his parents and sisters ranges from weekly to every other month. He visits India approximately annually to see his family. He visited three times during the period when his father suffered a stroke. His parents have visited him in the United States. Such ties constitute a heightened risk of foreign influence and

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

conflicts of interest. Disqualifying conditions AG ¶¶ 7(a) and (b) apply. Because of Applicant's bank account in India, ¶ 7(e) is relevant.

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 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 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, sisters, and brother-in-law live in India. He has contact with his parents weekly, and his siblings in India every other month. However, none of his family has government connections, except for his father's past employment, which ended eight years ago. His father no longer has contact with his former co-workers. None have served in the military forces. In addition, 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 government would exploit Applicant or his relatives based on their relationship. It is unlikely that Applicant would have to choose between the interests of his family in India and the interests of the United States. AG ¶ 8(a) applies.

Applicant's ties to the United States weigh in his favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. He has

lived in the United States since 1997. Applicant chose to become a U.S. citizen, even though it resulted in his loss of his Indian citizenship. He has owned three properties in the United States over the past several years. He has accrued substantial U.S. assets, including a retirement account, bank accounts, and trading accounts valued at more than \$360,000. He testified that he “proudly voted” in the 2008 presidential election. I conclude that Applicant would choose his U.S. ties over his foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

The bank account Applicant maintains in India has a balance of \$1,500. He makes deposits to it less frequently than he did in the late 1990s when his parents were experiencing financial difficulties. Applicant's U.S. funds of approximately \$360,000, along with real estate valued at \$285,000, far outweigh his account in India. It is unlikely that the Indian account could not be used effectively to manipulate him. AG ¶ 8(f) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's foreign contacts represented a security concern because of the potential for conflicts of interest and exploitation. However, Applicant's parents, sisters, and brother-in-law have no connections with the Indian military. His father had a connection with the Indian government, but that connection has ended. It is unlikely that the Indian government would exploit Applicant or his relatives based on their relationships. His small Indian bank account is outweighed by his substantial U.S. financial assets. Applicant's ties to the United States including his 16 years living here,

his years of employment with U.S. companies, and his substantial financial ties indicate that he is unlikely to make decisions that would harm the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

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 allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge