



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



In the matter of:)
)
) ISCR Case No. 12-04157
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant has mitigated the security concerns arising under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

On October 3, 2012, the Defense of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. This action was taken under Executive Order (EO) 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) implemented on September 1, 2006.

On October 24, 2012, Applicant answered the SOR and requested a hearing. The case was originally assigned to another judge and scheduled for a hearing that was later canceled. The case was reassigned to me on January 4, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a second notice of hearing on January 22, 2013, and the hearing was convened as rescheduled on February 7, 2012. At that hearing, Department Counsel offered Government's Exhibits (GE) 1 and 2 that were

admitted into evidence without objection. Department Counsel submitted documents requesting administrative notice of facts concerning India that were marked as Hearing Exhibit (HE) I. Applicant had no objection to the administrative notice request, and the request was granted. Applicant testified and offered Applicant's Exhibits (AE) A through F that were admitted into evidence without objection. The record was held open until February 11, 2013, for Applicant to submit additional information. Applicant later submitted an email with attachments that were marked as AE G through L that were admitted into evidence without objection. HE II is Department Counsel's email indicating she had no objection to the post-hearing submission. DOHA received the hearing transcript (Tr.) on February 15, 2013.

Procedural Matters

Two SOR allegations were identified as ¶ 1.b. To correct this administrative error, the second of those allegations was re-lettered as ¶ 1.c and the remaining two allegations were re-lettered in order as ¶¶ 1.d and 1.e. Applicant and Department Counsel had no objection to the re-lettering of the allegations.¹

Findings of Facts

In his Answer to the SOR, Applicant admitted four of the five SOR allegations (SOR ¶¶ 1.b – 1.d). His admissions are incorporated as findings of fact.

Applicant is 39 years old. He was born in India. He earned a bachelor's degree in 1996 and a master's degree in 1998. Both degrees were obtained from Indian educational institutions. He immigrated to the United States in November 1999 and became a U.S. citizen in October 2009. He is a software engineer who is employed by a defense contractor. He has worked for his current employer for ten years. This is the first time that he has applied for a security clearance.²

Applicant is married. His wife was born in India. They married in India in December 1999. She immigrated to the United States in December 2000 and became a U.S. citizen in October 2009. Applicant and his wife have two children, ages 3 and 6, who were both born in the United States. She currently is a housewife but expects to work again as a software engineer in the future. Their children only speak English.³

Applicant's father and mother are citizens and residents of India. His father is 74 years old. He is retired and receives a pension. He had previously worked for a private bank. He never served in the military or worked for the Indian government. He has authored books in the past and is currently writing one on spiritualism. Applicant's mother is 70 years old. She is a housewife and never worked for the Indian government.

¹ Tr. 9-10.

² Tr. 5, 33-35, 57-58, 60-61; GE 1, 2.

³ Tr. 35-36, 40-42, 47, 49-50, 54-59, 61; GE 1, 2; AE A-E.

Applicant's parents are financially independent. They have visited him twice in the United States. He talks to them on the telephone about twice a month.⁴

Applicant's father-in-law and mother-in-law are citizens and residents of India. His father-in-law is 74 years old. He worked for a private bank, but is now retired. His mother-in-law is about 65 years old and is a housewife. Neither of them worked for the Indian government. Applicant's wife talks to her parents on the telephone about once a week.⁵

Applicant's brother is his only sibling. His brother is 43 years old and is a citizen of India and resident of the United States. He is a software engineer who works for a U.S. government contractor. He is married and has two children. His wife is a housewife. He is a lawful permanent resident of the United States, and he and his wife expect to obtain their U.S. citizenship in the near future.⁶

Applicant's sister-in-law (wife's sister) and her husband are citizens and residents of India. They are both dentists and have their own dental practice. Neither has worked for the Indian government. They have two children. Applicant's wife talks to her sister about twice a month.⁷

Since immigrating to the United States, Applicant has visited India twice. He returned once to get married in 1999. At that time, he was an Indian citizen and traveled on an Indian passport. In 2010, he returned again to visit relatives. India does not recognize dual citizenship. When he returned as U.S. citizen, he traveled on his U.S. passport.⁸

Applicant has no property in India. His wife has a bank account in India with a balance of about \$1,000. She used that account while she lived there. Applicant and his wife own three houses in the United States. The total value of the three houses is about \$896,000. One property has no mortgage. The other two have mortgages totaling about \$308,000. His retirement accounts total about \$250,000. He has a savings account with a balance of about \$57,000. Applicant coaches his son's soccer team. He is also actively involved in his church.⁹

The president of Applicant's company indicated that Applicant has demonstrated honesty, loyalty, and support to the United States in the ten years that he has known

⁴ Tr. 12, 37, 42-46, 54-55, 62-64; GE 1, 2.

⁵ Tr. 38-39, 46-47, 54-55, 64-65; GE 1, 2.

⁶ Tr. 36-37, 49, 64-55, 64; GE 1, 2.

⁷ Tr. 39-40, 47-49, 54-55, 57, 61-62, 65; GE 2.

⁸ Tr. 40-44, 65; GE 2; HE I.

⁹ Tr. 14, 50-54, 55-57, 65-67; GE 2, AE G-L.

him. He described him as a trusted U.S. citizen. The information technology manager of the company stated that Applicant is very respectfully of privacy, sensitive information, rules, and restrictions. A number of other co-workers indicated that Applicant is diligent worker who possesses impeccable character.¹⁰

India¹¹

India is a multiparty, federal parliamentary democracy with a bicameral parliament and has a population of approximately 1.2 billion people.

The Indian Government generally respects the rights of its citizens, but serious problems exist. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearance, torture, and rape. The lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In November 2008, terrorists coordinated an attack at a hotel in Mumbai, frequented by westerners.

The United States recognizes India as key to strategic interests and has sought to strengthen its relationship with India. 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, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist.

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, although 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. As of 2008, 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 have been cases involving 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. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue addressing differences and shaping a dynamic and

¹⁰ AE F.

¹¹ HE I.

collaborative future. The United States and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

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 that are to be 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 regarding 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable here:

- (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; and
- (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.

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk of greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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.”¹²

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national

¹² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

security.”¹³ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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 coercion from the government, terrorist organizations, or other groups.¹⁴

Applicant has close family ties in India. His parents and in-laws are citizens and residents of India. Because India was listed as a country actively engaged in economic intelligence collection directed at the United States and has human rights and terrorism concerns, Applicant’s close family members in India create a heightened risk of foreign inducement, manipulation, pressure, or coercion. Those family contacts could also create a potential conflict of interest with his obligation to protect sensitive information. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. Three are potentially applicable in this case.

(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; and

(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.

Applicant’s contacts with his parents and in-laws cannot be characterized as causal or infrequent. Even though none of Applicant’s relatives in India work for governmental entities, the risk of intelligence collection, terrorism, or human rights abuses against his immediate family members could place Applicant in a position of having to choose between the interests of those family members and the interests of the United States, AG ¶¶ 8(a) and 8(c) do not apply.

¹³ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

¹⁴ See *generally*, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided.)

Thirteen years ago, Applicant came to the United States at the age of 26. He became a U.S. citizen in 2009. His wife and children are U.S. citizens. His children speak only English. His professional future and all of his property interests, including three homes, are in the United States. He is actively involved in the local community. He gave up Indian citizenship by becoming a U.S. citizen. Based on Applicant's deep and longstanding relationships and loyalties in the United States, he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is applicable to all of Applicant's foreign contacts and interests.

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):

- (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.

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 relevant 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 has developed deep roots in the United States. His coworkers attest to his reliability, trustworthiness, and high moral character. Since becoming a U.S. citizen, Applicant has only used his U.S. passport to travel overseas. Whatever potential conflicts that may arise from him having family members in India are more than counterbalanced by his interests, responsibilities, and loyalties to the United States.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. Considering all the evidence, I conclude Applicant has mitigated the security concerns arising under the guideline for foreign influence.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	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.

James F. Duffy
Administrative Judge