



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-04968
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

11/22/2016

Decision

HOGAN, Erin C., Administrative Judge:

On October 26, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concern 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) implemented within the Department of Defense on September 1, 2006.

On November 4, 2015, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 23, 2016. I was assigned the case on April 22, 2016. On August 2, 2016, a Notice of Hearing was issued, scheduling the hearing for August 25, 2016. The hearing was held as scheduled. During the hearing, the Government offered two exhibits which were admitted without objection as Government (Gov) Exhibits 1 - 2. Applicant and his wife testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A - D, without objection. The Government requested administrative notice be taken of certain facts regarding the country of India. The administrative notice document was marked as Administrative Notice Document (Admin Not) I. Applicant did not object to the administrative notice documents. The record was held open until September 8,

2016. Applicant timely submitted a two-page document which is marked and admitted as AE E. Department Counsel had no objection to AE E. The transcript was received on September 2, 2016. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice – India

The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute.

India is a multiparty, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. India has diplomatic relations with the United States. India and the United States pledged that both countries promised greater cooperation in countering terrorist networks and information sharing. India continues to experience terrorist and insurgent activities which may affect U.S. citizens directly or indirectly. Anti-Western terrorist groups, some on the U.S. government's list of foreign terrorist organizations are active in India. Past attacks have targeted public places, including some frequented by Westerners, such as luxury and other hotels, trains, train stations, markets, cinemas, mosques, and restaurants in large urban areas.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. The United States recognizes India is important to the United States strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law.

The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in fighting terrorism, creating a strategically stable Asia, and the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean.

In the past, India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and industrial espionage directed at the United States. The United States has economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian government generally respects the rights of its citizens, but continues to have serious human rights problems including "police and security force abuses, including extrajudicial killings, disappearances, torture, and rape; widespread corruption that contributed to ineffective responses to crimes..." Other human rights problems

include, "... disappearances, hazardous prison conditions, arbitrary arrest and detention, and lengthy pretrial detention." Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remain serious problems. A lack of accountability for misconduct at all levels of government persists. Investigations and prosecutions of individuals take place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contribute to infrequent convictions. (Admin Not 1)

India does not recognize dual citizenship. Foreign citizens entering India are required to obtain a visa. Travelers entering on tourist visas are not allowed re-entry within two months, unless they obtain specific permission. Non-citizens of Indian origin may obtain a "person of Indian Origin" (PIO) card, which allows unlimited travel to and from India.

Findings of Fact

In his answer to the SOR, Applicant admits to all of the allegations in the SOR. (Item 3)

Applicant is a 45-year-old employee of a Department of Defense contractor who is applying for a security clearance for the first time. He has worked for his employer since March 2014. He graduated from trade school. He is married and has two children, an eleven-year-old son and an eighteen-year-old daughter. (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.) (Gov 1)

Applicant was born in India. He first came to the United States on a work visa for nine months in 1997. After nine months, he moved back to India. In 2000, he moved to the United States on a permanent basis. He became a U.S. citizen in October 2010. He married his wife in 1996 in India. When he moved to the United States in 2000, his wife and children remained in India. He provided support for them to include purchasing a house. His wife and children moved to the United States in 2009. His wife is a permanent resident. His children are U.S. citizens. (Tr. 16 - 22; Gov 1)

Applicant and his family came to the United States for better opportunities. His wife intends to apply for citizenship. His children did not like living in India. Applicant's daughter is a college student in the United States. His son is disabled and has special needs. The state where Applicant resides provides special education services for his son. Applicant testified that India does not provide similar services. Applicant is sponsoring his sister and brother to immigrate to the United States. (Tr. 43, 49, 57-59, 72-73; AE B; AE C; AE D)

Applicant's most recent visit to India was for 40 days in July 2015. His mother was ill. His previous visit was six years earlier when he moved his family to the United States. He informed his supervisor when he traveled to India. He traveled to India with his U.S. passport and PIO card issued by the Indian government. (Applicant referred to it as a lifelong Indian visa). When Applicant became a U.S. citizen, he revoked his

Indian citizenship. Applicant holds a PIO card which is a multiple entry visa. The PIO card facilitates his travel to India. It does not grant any privileges of Indian citizenship, except for unlimited travel to and from India. (Tr. 26, 60-66)

Applicant's mother, sister and brother are citizens of and reside in India. He sends support to his mother and sister. His father has passed away. His mother is a housewife. She lives with Applicant's sister. Applicant's sister is a housewife. She is married and has two children. Her husband is a carpenter. Applicant has a bank account in India that he uses to transfer money to India to be used for his mother's support. Applicant's brother is an instructor at a trade school. He has monthly telephone contact with his brother. (Tr. 24-27; Gov 2)

Applicant's parents-in-law are citizens of and reside in India. His father-in-law is a retired tradesman. His mother-in-law is a housewife. His in-laws live in a house in India that Applicant owns. His wife and children lived in the house with them before immigrating to the United States. Applicant's sister-in-law and her two children also live in the house. She recently separated from her husband. Her husband is a police officer. They are in the process of divorcing. Applicant's other brother-in-law works somewhere overseas. He and his wife have not had contact with him for over 15 years. (Tr. 28-34)

Applicant's wife's uncle is a priest. He lived in the United States for several years and visited Applicant and his family twice at their home. He is now retired and has moved back to the India. (Tr. 34)

Applicant has an aunt who lives in India. He loaned her \$40,000 so that she could purchase some land. She was unable to repay the loan, so she transferred some property to Applicant's wife. The land is located in India and is worth about \$20,000. Applicant's aunt still owes him over \$20,000. Applicant's cousin lives with his aunt. He is a teacher at a trade school. He speaks with his aunt and cousin on the telephone on a weekly basis. (Tr. 38-41; Gov 1 at 47-48; Gov 2)

Applicant has three friends who are citizens and reside in India. One friend is employed as clerical support for a prison. He calls his friends every three months by telephone. One friend is a welder. His other friend is an electrician. Applicant loaned one of his friends \$6,000. His friend used it for his son's education. His friend repaid the loan. (Tr. 34-37; Gov 1 at 48; Gov 2)

Applicant has a bank account in India with a \$50 balance. He uses the bank account when he travels to India. He transfers money to the account in advance of traveling. His wife has a bank account in India with a balance of \$4,000. She used the account when she and her children were living in India. (Gov 2 at 5)

Applicant's wife has approximately \$35,000 in mutual funds in India. Applicant sent her money to invest while he was working in the United States. All of the investments occurred before Applicant became a U.S. citizen in 2010. Applicant has thought about transferring the funds to U.S. financial institutions, but claims he had no time because the care of his disabled son takes up most of his time. He does not

monitor the mutual funds account and does not know the current value of the account. (Tr. 42-44; Gov 1 at 43-45; Gov 2 at 6-7)

Applicant owns the house where his parents-in-law reside and four parcels of land in India. The house is worth about \$12,000. The parcels of land are worth \$10,000, \$6,000, \$3,000, and \$20,000. The \$20,000 parcel was the recent transfer of land from his aunt to Applicant's wife. The total value of the land is around \$51,000. Applicant will have to travel to India in order to sell the properties. (Tr. 45-49; Gov 1 at 46-47; Gov 2 at 7-8)

Applicant and his wife would divest their assets in India, if necessary. They are not important to their overall financial situation. (Gov 2 at 5-8). Applicant rents out rooms in the house where his in-laws reside. The rent money of about \$100 is given directly to his in-laws for their expenses. (Tr. 67-68)

In the United States, Applicant has two checking accounts with a \$12,500 and a \$700 balance. He has a 401(k) account with a \$20,000 balance. He owns two cars in the United States. Both are paid off. He is current on his federal and state income taxes. He voted in the U.S. election. He is active in his church. He and his wife recently loaned the church \$25,000 towards building a new church. (Tr. 50-56; AE A)

Applicant's pastor states that Applicant is a responsible family man. He is reliable, trustworthy, honest and dependable. He is an active member of the church who cares for others and accomplishes goals. (AE E at 1) Applicant's supervisor has supervised him for several months. He states that Applicant does quality work. He helps others, works hard, and keeps busy. The supervisor said Applicant is a pleasure to have on his roster because of his work ethic and ability. (AE E at 2)

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, which are useful 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 over arching 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of 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).

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 guideline indicates two conditions that could raise a security concern and may be disqualifying under AG ¶ 7 according to the facts of this case:

AG ¶ 7(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

AG ¶ 7(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

AG ¶ 7(e) a substantial business, financial, or property interest in a foreign country, or foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Several foreign and indigenous terrorist groups within India create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) raises a security concern regarding Applicant's relatives who are citizens of and reside in India. A valid concern is raised with regard to Applicant's immediate family members including his in-laws, who are citizens of and reside in India.

AG ¶ 7(b) is applicable because Applicant's connections with his extended family members in India create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his extended family members by providing that information.

AG ¶ 7(e) applies because most of Applicant's assets are located in India, to include a mutual fund account in his wife's name, a house, and several small parcels of land.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Of these conditions, four potentially apply to Applicant's case:

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.;

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;

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; and

AG ¶ 8(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.

I find AG ¶ 8(b) applies. While Applicant has familial obligations to his mother, brother, sister and in-laws who are citizens of and reside in India, his wife and two children reside in the United States. Applicant's children are U.S. citizens. His wife is in the process of applying for U.S. citizenship. Applicant has longstanding ties to the U.S., having lived in the U.S. since 2000. His wife and children have resided in the U.S. since 2009. His children are educated in the United States and prefer the United States over India. Applicant and his wife are focused on caring for their special needs son. They joined a church and made a generous loan to the church towards a new church building. Applicant can be expected to resolve any conflict in favor of U.S. interests.

AG ¶ 8(f) applies. While the majority of Applicant's investments are located in India, several in Applicant's wife's name, they are unlikely to result in a conflict that could be used to influence, manipulate, or pressure Applicant. Applicant's main focus is caring for his special needs son and educating his daughter. When the opportunity arises, he will consider selling his assets in India. Applicant does not appear to be concerned with money. In the past, he provided generous loans to several family members, a friend, and his church. His priority is his own immediate family, who all reside in the United States.

Security concerns raised under Foreign Influence are mitigated.

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 the facts and circumstances surrounding this case. I considered Applicant moved to the United States for nine months in 1997. He moved to the United States on a permanent basis in 2000. He moved his wife and children to the United States in 2009. His

children are U.S. citizens and his wife is in the process of applying for her U.S. citizenship. While Applicant is close to his immediate family members and in-laws, who reside in India, he has established himself in the United States. The last time he traveled to India was in the summer 2015 because his mother was ill. He had not traveled to India for six years prior to that time. His previous visit was for the purpose of moving his wife and children to the United States. He and his immediate family intend to live and work in the United States.

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
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Subparagraphs 1.a – 1.m:	For Applicant
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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.

ERIN C. HOGAN
Administrative Judge