



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



In the matter of:

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) ISCR Case No. 14-06504
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Applicant for Security Clearance

Appearances

For Government, Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

10/05/2016

Decision

MASON, Paul J., Administrative Judge:

Applicant has close ties to foreign family in India. He owns a house in India that is worth at least \$100,000. But the evidence shows that it is unlikely that the potential for foreign influence will place him in a position that compromises U.S. interests. Eligibility for access to classified information is granted.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on December 23, 2011. On December 6, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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), effective in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on January 7, 2016. A notice of hearing was mailed to Applicant on May 23, 2016, scheduling a hearing for May 27, 2016. The hearing was held as scheduled. The Government's two exhibits (GE 1-2) and the Applicant's two exhibits (AE A-B) were admitted in evidence without objection. Applicant testified. His six post-hearing exhibits (AE C-H) were forwarded to me without objection. The transcript (Tr.) was received by the Defense Office of Hearings and Appeals (DOHA) on June 6, 2015. The record closed on June 13, 2016.

Ruling on Procedure

Department Counsel requested that I take administrative notice of certain facts about India. The facts which I will administratively notice appear after Findings of Fact. The facts administratively noticed are limited to matters that are obvious to the average person, easily verifiable, and relevant to this case. (Tr. 13-14) The Administrative Notice Memorandum has been marked as GE 2 and admitted into the record.

Findings of Fact

Applicant admitted that he has seven family members who are citizens and residents of India. (SOR ¶¶ 1.b-1.h) He admitted that he owns a home in India worth approximately \$50,000 at the time of purchase. (SOR ¶ 1.a)

Applicant, 49 years old, was born in India in 1967. In August 1987, he received a bachelor's degree in business communications from an Indian educational institution. In September 1990, he received a chartered accounting certificate, a degree similar to certified public accountant (CPA) degree awarded in the United States. In January 1991, he received another degree that was not identified. In June 1994, he immigrated to the United States, and has been employed by U.S. employers since November 1995. In April 1998, he married an Indian citizen who is now a naturalized U.S. citizen. He has owned his U.S. home since 2002. He was naturalized as a U.S. citizen in May 2006. Applicant has been employed by a defense contractor since 2009. In 2011, he was working as a special master, but is currently a program manager, according to his supervisor. He seeks a security clearance. (GE 1; AE H)

SOR ¶ 1.a - Applicant admitted that he and his brother (SOR ¶ 1.c) co-owned a house in India. Applicant paid approximately \$50,000 for the purchase in 1997, using his own funds. His brother's name was placed on the title for administrative purposes. Applicant purchased the house because he was not sure he was going to remain in the United States. Applicant believed that the government's concerns would be reduced if his brother's name was removed from title to the property. The process occurred on April 21, 2016. Once the deed is registered with the affiliated condominium association, the title to the house will pass to Applicant. The current value of the house is between \$100,000 and \$110,000. Applicant's brother (SOR ¶ 1c.), his sister-in-law (SOR ¶ 1.e), and two of his nephews (SOR ¶ 1.h) live in the dwelling. His brother does not pay taxes, but covers maintenance expenses for the house. (Answer to SOR; AE B; Tr. 20, 30-33)

SOR ¶ 1.b - Applicant's mother-in-law was a citizen and resident of India until her naturalization as a U.S. citizen in February 2016.¹ She still spends six months in the United States with Applicant and six months in India at Applicant's home with her other son (Applicant's brother). (SOR 1.c) She is a 68-year-old housewife who has never been employed. Applicant feels a duty to take care of her. (GE 1; AE B; Tr. 21-22, 33)

SOR 1.c - Applicant's brother, 56 years old, has been an accountant for a private Indian company. He visited Applicant in 2012. He lives in the house (SOR ¶ 1.a) that Applicant owns. He has no connection to the Indian government or the military. Applicant's telephone contact with him (and the other listed family members) is weekly to monthly to quarterly. (GE 1; AE B; Tr. 22-23, 36)

SOR 1.d - Applicant's sister is about 59 years old. She is married to Applicant's brother-in-law (SOR ¶ 1.f) She has always been a housewife. She has never had any affiliation with the Indian government or military.

SOR ¶ 1.e - Applicant's sister-in-law is 51 years old and the housewife of Applicant's older brother (SOR ¶ 1.c) They live in the house cited in SOR ¶ 1.a. She has never had any association with the Indian government or military. (Tr. 22-24, 36)

SOR 1.f - Applicant's brother-in-law is 57 years old and married. He is an exporter of stainless steel silverware. He has never had any connection to the Indian government or military. (Tr. 25-26, 37)

SOR ¶ 1.g - Appellant's niece is about 30 years old. She is the daughter of Applicant's older sister (SOR ¶ 1.d). A permanent resident of Canada since 2012, she is employed as a furniture salesperson. Applicant's contacts with her are from once a week to once every three months. (GE 1; Tr. 26-27)

SOR 1.h - Two nephews are the sons of Applicant's elder brother (SOR ¶ 1.c) and sister-in-law (SOR ¶ 1.e), and currently live with them. The 27-year-old son is single and has worked for a global company as a systems analyst for the past three years. The other son, about the same age and single, is an accountant for a finance company.

The third nephew is 34 years old and single. He is the oldest son of Applicant's sister (SOR ¶ 1.d) and supports Applicant's brother-in-law (SOR ¶ 1.f) in his exporting business.

Applicant has lived consistently in the United States since 1994. He purchased his house in 2002. Its current value is approximately \$550,000. Applicant purchased a rental property in December 2014 for \$365,000. He and his wife have two U.S. checking accounts totaling approximately \$28,000. He also has: \$300 in a savings account; \$375,000 in his 401K retirement account; and \$16,000 in an income retirement account (IRA). His wife has: \$120,000 in her retirement account; \$14,000 in an IRA; and \$40,000

¹ Applicant's biological parents and his father-in-law are deceased. (GE 1; Tr. 38-39, 46)

in a brokerage account. Their combined U.S financial interests total approximately \$1,100,000. Applicant provides no support to his Indian family members. About every three to four years, Applicant travels to India to visit his family. Both of Applicant's children were born in the United States. His son is 17 years old and his daughter is 13 years old. (Tr. 27, 39-45)

Character Evidence

AE A is a position statement written by Applicant in which he repeats his hearing testimony. He has worked for U.S. government agencies for 10 years. (AE C) Applicant's friend and neighbor from 2001 until he moved away from the area in 2013, remains in periodic contact with Applicant. The friend believes Applicant is a good family man who participates in community affairs. His children are active in youth organizations. Applicant lives within his means. (AE D) Applicant's neighbor for 15 years believes he is a law-abiding citizen. (AE E)

Applicant's coworker from 2009 to 2015 knows that Applicant is active in community affairs. He recommends Applicant for a security clearance. (AE F) Applicant's priest has known him since 2002, and is mindful of Applicant's regular church attendance. (AE G)

Applicant's supervisor has had weekly contact with Applicant since his hire in May 2009. He watched Applicant progress from an entry level position to manager. He considers Applicant a team player and detail-oriented. He recommends Applicant for a security clearance. (AG H)

Administrative Notice

Republic of India (India)

India is a sovereign, socialist, secular democratic republic with multiple political parties conducting government activities in a federal parliamentary democracy model. The country has about 1.21 billion citizens.

The United States considers India key to its strategic interests and has strengthened its relationship after a period of strained ties caused by India's development of nuclear weapons, the speed of India's economic reforms, and partnerships with Iran and China. The United States has removed or revised U.S. export requirements for sale to India of dual-use and civil nuclear items, including nuclear reactors, even though there have been several documented cases involving the illegal export of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to be applied for prohibited purposes. As of 2000, India was considered actively engaged in economic intelligence collection and industrial espionage directed at the United States. By 2008, India was considered heavily involved in criminal espionage in illegally obtaining U.S. export-related products.

Both countries are dedicated to the free flow of commerce and establishing stability in Asia. The United States is India's largest trading and investment partner. Foreign assistance to the country was about \$3 billion, with the United States providing about \$126 million in developmental assistance.

In 2015, President Obama recognized that a long term partnership with India was vital to U.S. interests in the Asian and Pacific region and around the globe. While India and the United States have a deeply shared concern in fighting global terrorism, the country continues to have problems with domestic terrorism. Terrorist activity is concentrated in Kashmir, a disputed area bordering Pakistan, and terrorist groups are still active in other parts of the country. Terrorist attacks occurred in the Punjab in July 2015, and in Kashmir in August 2015.

Regarding human rights issues, the government of India generally respects its citizens' rights. However, corruption in the police and security forces continues to be a problem, particularly in criminal investigations and during efforts to suppress separatist and terrorist groups. Abusive practices against women and children, and caste-based discrimination persists, despite criminal penalties for violations. But there is no evidence that India uses force or duress to obtain economic intelligence from its citizens.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Following the security concern definition 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 must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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 as to obtaining a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security concern of the foreign influence 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 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains three potential disqualifying conditions that may be pertinent in this case:

- (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 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's brother, sister, sister-in-law, brother-in-law, niece, and three nephews are citizen-residents of India. While his mother-in-law became a U.S. citizen in February 2016, she still regularly spends six months a year in India. Applicant talks to his family members at a weekly to monthly frequency. He travels to India every three to four years, with his most recent trip in April 2016. Even though the country is recognized as having the world's largest democratic government, India has human rights problems and has been victimized by terrorist activity. This creates a heightened risk of foreign exploitation, inducement, manipulation under AG ¶ 7(a) and a potential conflict of interest under AG ¶ 7(b).

Applicant purchased a house in India in 1997 because he was unsure whether he would remain in the United States permanently. The purchase price was approximately

\$50,000. The house is currently valued at approximately \$110,000. He and his brother (SOR ¶ 1.c) were co-owners until April 2016, when he had the title transferred into his name. The house in India could subject Applicant to a heightened risk of foreign influence or exploitation. AG ¶ 7(e) applies.

The potential mitigating conditions under the foreign influence guideline are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 minimal, or the individual has such deep and long-lasting 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;

(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

(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 of and could not be used effectively to influence, manipulate, or pressure the individual.

The form of a country's government and its relationship with the United States, coupled with its human rights record, are important considerations in evaluating the likelihood that an applicant's foreign family members may be vulnerable to foreign influence. The risk of exploitation, duress, or influence are markedly greater when the foreign nation has an authoritarian form of government, or a family member is connected with a foreign government or its military, or the foreign government conducts intelligence activities against the United States. In sum, the positive relationship that India has with the United States must be tempered with India's poor human rights record and criminal espionage operations against the United States.

None of Applicant's immediate family members have ever been connected to the Indian government or the military. His 68-year-old mother-in-law, his 59-year-old sister, his 51-year-old sister have always been housewives. Applicant's 56-year-old brother is an accountant for a private Indian company. His 57-year-old brother-in-law is an exporter in stainless steel silverware and Applicant's 34-year-old nephew assists him. Applicant's niece has been a permanent resident of Canada since 2012 and works as a furniture salesperson. One of his nephews works in India for a global company, and another is an accountant for a private company. India is a democracy that has developed a strong bond with the U.S. in the areas of trade, investment, as well as in fighting global

terrorism. It is highly unlikely that the country would jeopardize that relationship by applying pressure on Applicant or one of his family members because of their relationship with him. AG ¶ 8(a) applies.

Applicant's ties to his family members in India are minimal in comparison to his stronger ties to the United States where he has been domiciled since 1994. He has been living and working in the United States since at least November 1995. He became a naturalized U.S. citizen in May 2006. His wife is also a naturalized U.S. citizen. He has owned his home since 2002. His positive character references indicate that he is respected in the workplace for his sound judgment. He has created strong bonds in his neighborhood. Applicant's two children were born in the United States and are active in national youth organizations. I conclude that if a conflict of interest were to arise, Applicant would choose his U.S. ties over his family member ties in India. AG ¶ 8(b) applies. Applicant's travel to India has no independent security significance.

AG ¶ 8(c) is not applicable because Applicant's contacts with his family members are neither casual nor infrequent.

Applicant's ownership of his house in India increased in value to at least \$100,000. Although the title to the house is now in Applicant's name, there is still a risk that foreign influence by an Indian government agent or a criminal could apply pressure or coercion on one of Applicant's family members in an effort to target Applicant. But Applicant's Indian financial interest is one-tenth the size of his U.S. financial interest which amounts to approximately \$1,100,000. On balance, I conclude that Applicant's house in India is unlikely to result in a conflict that could be used effectively to influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies.

Whole-Person Concept

I have evaluated this case under the specific disqualifying and mitigating conditions of the foreign influence guideline. I now consider those findings in the context of the nine general factors of the whole-person concept identified in 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 the participation was 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 on careful consideration of the specific guidelines and nine factors for the whole-person concept.

In weighing the record as a whole, I have carefully weighed India's strong relationship with the U.S. against the domestic terrorism that still plagues India. Although

Applicant has close ties with his family members in India, he has stronger relationships and ties in the United States. Applicant, his wife, and two children are all U.S. citizens. He has accumulated substantial U.S. assets, including his home that he has owned since 2002. He has worked for U.S. employers since November 1995. He has provided a good job performance for the same employer since 2009. He has earned the respect of his priest and neighbors for over ten years. Considering the disqualifying and mitigating conditions, in the context of the general factors of the whole-person concept, Applicant has mitigated the security concerns associated with foreign influence.

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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraphs 1.a-1.h: 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.

Paul J. Mason
Administrative Judge