



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 14-06677
)	
Applicant for a Public Trust Position)	

Appearances

For Government: Meg Foreman, Esq., Department Counsel
For Applicant: Stephen J. Stair, Esq.

10/21/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline E (Personal Conduct). Applicant is a naturalized U.S. citizen from India. She has mitigated the foreign influence concerns raised by her relationships with relatives who are citizens of India. Applicant incurred delinquent debts, however her finances are now under control. Her failure to disclose these debts as required was unintentional. She has mitigated the Guidelines B, F, and E concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on February 28, 2014. On June 9, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guidelines B, E, and F. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended

(Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on June 29, 2015, and requested a hearing. Department Counsel was ready to proceed on December 28, 2015, and Counsel for Applicant entered his appearance on February 4, 2016. The hearing was scheduled for June 1, 2016, with another administrative judge. The case was transferred to me on May 31, 2016, and I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until June 17, 2016, to enable her to submit additional documentary evidence. She timely submitted AX K through AA which I have admitted without objection. DOHA received the transcript (Tr.) on June 9, 2016.

Procedural Matters

Department Counsel requested that I take administrative notice of certain facts about India.¹ Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below. The SOR alleges under Guideline B that Applicant's parents, brother and sister are citizens and residents of India. Applicant admits these allegations. The SOR alleges under Guideline F that Applicant has seven delinquent debts totaling \$23,414. Applicant admits these allegations, and gives a status of each account. She states that she paid the debts alleged in SOR ¶¶ 1.b, 1.c, 1.e, and 1.f. The SOR also alleges under Guideline E that Applicant intentionally falsified her e-QIP when she failed to disclose her delinquent accounts as required. Applicant denies these two allegations. Applicant's admissions in her Answer are incorporated in my findings of fact.

Findings of Fact

Applicant is a 43-year-old monitor technician who has worked for her primary employer since 2013. She has also worked as a monitor technician for another employer since 2007. (GX 1.) She is being sponsored for a position of trust by a federal contractor. (Tr. 54.) She received her bachelor's degree in 1992 and her master's degree in 1997, both from universities in India. (GX 1.) Prior to leaving India, Applicant worked as a teacher. (Tr. 57.)

India is a parliamentary democracy that shares significant strategic interests with the United States. In addition to cooperating on counter-terrorism issues, the two countries have increased trade in goods and services, and engage in mutual efforts to ensure energy security, combat global climate change, and promote job growth. Although largely positive, the relationship between the United States and India is not

¹ The administrative notice request is appended to the record as Hearing Exhibit (HE) 1.

without its concerns. India is an avid collector of U.S. proprietary information, and there have been several criminal cases of industrial espionage arising out of India, both from private sources and from the government itself. Terrorist activity occurs in many areas of India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups. India has some significant problems with human rights. India has good diplomatic relations with Iran and supports that country's efforts to develop nuclear energy for peaceful purposes. India's largest supplier of military systems and spare parts is Russia. Despite this, President Obama has called the United States' relationship with India one of the defining partnerships of the 21st century. (HE I.)

Applicant's parents, sister, and brother are residents and citizens of India. They reside in a rural area near the border of Pakistan, which experienced a terrorist attack in 2015, but is generally not an area subjected to terrorist activities. (Tr. 23; HE I.) Her father retired from the Indian army in 1996 and currently works as a farmer. He receives a pension, but has no obligations to or affiliations with the army. Her mother has not worked outside the home. (Tr. 23-25.) Applicant's parents last visited her in the United States in 2012 for two months. (Tr. 35.) Her parents intended to remain in the United States and had received green cards, however, Applicant's brother-in-law died in an accident so they returned to India, and their green cards have since expired. (GX 2.) Applicant's sister does not work outside the home. Applicant has weekly telephonic contact with her. (GX 1.) Applicant's brother received a bachelor's degree and several years of computer training, but now also works as a farmer. (Tr. 25.) Applicant is sponsoring her brother and his family to immigrate to the United States, but she is uncertain when this might occur. (Tr. 88-89.) Her sister's immigration paperwork has also been approved, however, her in-laws will not permit her to move to the United States. (Tr. 88.)

Applicant was married in an arranged marriage in India in 2002. (Tr. 27.) Applicant immigrated to the United States in 2005 to join her husband, and became a naturalized U.S. citizen in 2010. Because India does not recognize dual citizenship, Applicant effectively renounced her Indian citizenship when she became a U.S. citizen. Upon her naturalization, Applicant surrendered her Indian passport. (GX 1.) She used her United States passport to visit her family in India in 2010, 2012, and 2015, due to deaths and illnesses of family members. (Tr. 73.) She was scheduled to return to India in July 2016 due to her uncle's death. (Tr. 87.) Otherwise, Applicant talks to her parents on a daily basis. (GX 1.)

Shortly after her arrival in the United States, Applicant's husband attempted to force her to return to India, arguing that because he sponsored her, he could send her back to India. However, she refused to leave and her son was born in late 2005. (Tr. 33; GX 1.) Between 2005 and 2008, Applicant and her husband continued to experience marital difficulties and they ultimately divorced in 2010. (Tr. 31-32.) The relationship between Applicant and her ex-husband remained difficult, and Applicant had to move several times because he followed her. (Tr. 33.) Because these moves were sudden

and unplanned, she not only experienced additional financial strain, but there were also times when she was forced to stay the night in her car. (Answer.) Applicant's ex-husband initially had some visitation rights with their son, but currently does not. He is required to pay an unspecified amount of child support. (Tr. 32.)

Although Applicant has no family here, other than her son, she has chosen to remain in the United States, considers it to be her home, and her allegiance is to the United States. (Tr. 57; Tr. 36-37.) She has rented the basement in the home of a friend since 2010, and Applicant pays that friend to provide after-school care for Applicant's son who attends public elementary school. (Tr. 44.)

Applicant's financial difficulties arose in about 2012. (GX 3.) Applicant used much of her financial resources for the costs associated with her 2010 divorce. (Answer.) In 2011, she traded in a car that her husband had significantly damaged for another used vehicle. After about two weeks, the car was not running properly and Applicant tried to return it to the dealer. However, the dealer refused to accept the return. Applicant then traded in the car at another dealership, and purchased another used car from that dealer. She lost about \$10,000 through these transactions. (Answer; Tr. 43.) In 2012, Applicant incurred unanticipated expenses when she had to return to India following her brother-in-law's death in an accident. (Answer.) Also in 2012, Applicant contracted with a credit-consolidation company, and made about seven monthly payments of an unrecalled amount to the company. After one of her creditors contacted Applicant and told her that it had not received any payments in months, she realized that the credit-consolidation company was not paying her creditors and she stopped making her payments. The missed payments on multiple accounts and the loss of the money she paid to the credit-consolidation company compounded her financial difficulties. She then contacted each of her creditors to make payment arrangements. (Answer.)

Applicant has submitted documentary evidence that shows the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e through 1.g, totaling \$13,659, have been paid. (AX K; AX O; AX P.) The two remaining delinquent accounts, totaling about \$9,755, are owed to the same creditor. At the time of the hearing, Applicant had made payment arrangements with the creditor, but had yet to make her first payment. (Tr. 46.) She has not incurred any delinquent debt since 2012. (GX 4.) She is current on all her ongoing financial obligations, and she lives within her means. (GX 4.) She paid off several delinquent debts, including a judgment, between 2013 and 2014. (GX 4.)

Although Applicant never received any formal education in English, she speaks only English at work, and is considered by her coworkers to be an effective communicator. (Tr. 70; AX H; AX I.) However, there were times during the hearing when Applicant and counsel had difficulty understanding one another. (Tr. 42; Tr. 45; Tr. 52; Tr. 55; Tr. 80.) Applicant testified that she did not intentionally falsify her e-QIP, but that she did fully not understand the financial questions. (Tr. 51; Tr. 71; Tr. 72; Tr. 81; Tr. 86.) She also stated that she did not fully understand the questions the investigator

asked her during her personal subject interview in May 2014, and that she found some of the questions to be “confusing.” (Tr. 71-72.) Applicant’s responses to the financial questions during the interview support her claims. For example, when the investigator asked Applicant if she had any delinquent debts, Applicant responded “No.” The investigator then questioned Applicant about a specific debt, and Applicant provided the details of the debt. The investigator then asked if she had any other delinquent debts and Applicant responded “No.” This exchange occurred ten times during the interview. (GX 2.)

Applicant submitted nine letters of reference from coworkers, including one from her supervisor of nine years. She is described as reliable, trustworthy, hardworking, dedicated, and professional. She is also considered to be friendly and kind. (AX A-I.)

Policies

The standard that must be met for assignment to sensitive duties is that the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is “clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 [sensitive] information will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a

mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for a public trust position.

Analysis

Guideline B (Foreign Influence)

The foreign influence trustworthiness concern is explained at AG ¶ 6:

Foreign contacts and interests may be a [trustworthiness] 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.

Two disqualifying conditions under this guideline are relevant to 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;

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.

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country, as well as each individual family tie, must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Although the relationship between the United States and India is largely favorable, India has a documented history of collecting U.S proprietary information. Also, Indian citizens have been involved in several criminal cases of industrial

espionage against the United States. Additionally, India has a poor human rights record and terrorist activity is present in many regions. Accordingly, the record contains sufficient information to support a finding that Applicant's relationships create a heightened risk of coercion and exploitation. These two disqualifying conditions are established.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

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 government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. 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).

Three mitigating conditions under this guideline are potentially relevant:

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; and

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.

AG ¶ 8(a) is not established, for the reasons set out in the above discussion of AG ¶ 7(a). AG ¶ 8(c) is not established. Applicant's contacts with her family members are frequent and, by their nature, not casual.

AG ¶ 8(b) is established. Applicant has demonstrated her undivided loyalty and her ties to the United States, and would resolve any potential conflict of interest that could arise from her relationships with family members in India in favor of U.S. interests. Specifically, Applicant came to the United States in 2005, and despite the efforts of her husband to force her to return to India, and her lack of family in the United States, she remained. She has returned to India only for family emergencies. Her family members are farmers and reside in an area where terrorist activity is not common. She is sponsoring her brother and his family to immigrate to the United States. She effectively renounced her Indian citizenship when she became a naturalized U.S. citizen in 2010, and has traveled to India using only her U.S. passport.

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise [sensitive] information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting [sensitive] information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by the record evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred debt due to circumstances that were largely beyond her control, primarily her divorce, her unanticipated moves, and her car problems. She initially acted responsibly and in good faith by contracting with a credit-consolidating company to repay her creditors. However, the company embezzled her money and she fell further behind on the debts. She then contacted each of her creditors and methodically resolved five of the seven debts alleged in the SOR, paying more than 58% of the total alleged debt. She has arranged a payment plan with the remaining creditor. She also repaid several significant delinquent debts prior to the issuance of the SOR. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A trustworthiness adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has not incurred any recent delinquent, and currently lives within her means. The circumstances which led to her indebtedness are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(d) apply. Applicant has addressed and is repaying her debts in a responsible manner. Although her financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues within her means, as well as a track record of debt resolution.

Guideline E (Personal Conduct)

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [trustworthiness] process or any other failure to cooperate with the [trustworthiness] process.

The relevant disqualifying condition in this case is AG ¶ 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.")

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

I found Applicant's explanation of her omissions on her e-QIP to be credible and consistent with the record evidence, and her demeanor to be honest, forthcoming, and candid. Therefore, I conclude that she did not intentionally falsify her e-QIP.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all 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.

I have incorporated my comments under Guidelines B, F, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant has worked for the same employer for nearly nine years, and is held in high esteem by her supervisor and coworkers. She is a hard-working and dedicated single mother who has worked a second job for over three years in order to improve her financial circumstances. Despite her ex-husband's efforts to force her to return to India, she stood her ground and remained in the United States, to which she pledges her allegiance. She is sponsoring her brother and his family to move to the United States.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a – 2.b: For Applicant

Paragraph 3, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 3.a – 3.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Stephanie C. Hess
Administrative Judge