



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 15-01074

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Department Counsel
For Applicant: *Pro se*

March 28, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 6, 2014. (Government Exhibit 1). On December 6, 2015, the Department of Defense (DOD) pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant responded to the SOR in writing on January 11, 2016, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on or about April 7, 2016. Applicant received the FORM on April 12, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted no reply to the FORM. This case was assigned to the undersigned

on January 26, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in India. (See, Government Exhibit 5.) There was no objection from Applicant, as Applicant submitted no Response to the FORM. The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR testimony and the exhibits. The Applicant is 42 years of age and married. He is employed as a Principal Software Engineer by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline. He has been working for his current employer since December 2013. Applicant has held a public trust position in the past without incident.

Applicant was born in India in 1974. He grew up in India, and attended college there, where he earned a Bachelor's degree in 1995 and a Master's degree in 1998. He immigrated to the United States in 2001. He was married in India in 2005. His spouse is an Indian citizen and a U.S. resident alien. He attended a University in the United States and obtained his MBA in 2008. In 2012, he became a United States citizen and obtained an American passport. At that time, he renounced his Indian citizenship and relinquished his Indian passport. Applicant has two minor children who were born in the United States. (See, Applicant's Answer to SOR.)

Applicant's mother, father, sister, mother-in-law, and father-in-law are citizens and residents of India. Applicant claims that none of his family in India are affiliated with the government of India. His parents and in-laws are retired. His sister works for a private company and does not deal with the Indian government.

Applicant supplements his father's income annually with about \$3,000. In total he has already sent about \$40,000 to support him. He does not know when this will

discontinue, but the amount he sends is diminishing as time passes. Applicant's spouse maintains a small bank account in India to use for convenience purposes when they are visiting. He states that he has no significant financial or property interest in India.

Other than his extended family in India, Applicant maintains contact with three friends who are citizens of India. However, all of them reside in the United States. He speaks to them by phone or in person about once a month. None of them have any affiliation with the Indian government.

I have considered the information provided by the Government on India. India is among the most active collectors of U.S. economic and proprietary information. There have been numerous, recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India and private companies and individuals in India. In March 2008, a Minnesota based company pleaded guilty to submitting false export licenses to the Commerce Department in connection with the shipment of nuclear testing equipment to an entity in India. That same year, the Department of Justice brought two cases against defendants charged with illegally exporting controlled products to Indian government entities involved in the development of ballistic missiles, as well as space launch vehicles and combat fighter jets. More recently, in January 2013, the former export control manager of a Pennsylvania based company pleaded guilty to the illegal, unlicensed export to India and China of over 57 microwave amplifiers, products that have military applications. There are other cases concerning illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India that have included: (1) military night vision components; (2) vibration amplifiers and cable assemblies, for use in both military and civilian aircraft; (3) manufacturing equipment related to improving the accuracy of strategic ballistic missiles, which the U.S. Government deemed to be an unacceptable risk of diversion to programs for the development of weapons of mass destruction or related delivery systems. There are a number of terrorist groups that operate in the Indian state of Jammu and Kashmir, particularly along the Line of Control separating Indian and Pakistani-controlled Kashmir. The State Department strongly recommends avoiding travel to the states of Jammu and Kashmir.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every

case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

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 risks of foreign exploitation, inducement, manipulation, pressure, or coercion; and

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.

Conditions that could mitigate security concerns:

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.;

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

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a

rational connection, or nexus, must be shown between Applicant's situation and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Conditions 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 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* apply. However, Mitigating Conditions 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.; 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 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* also apply.

Applicant has lived in the United States for the past fifteen years. He immigrated to the United States; became a naturalized citizen; obtained a good job; and established his family and home here. His parents and in-laws, who are residents and citizens of

India, in no way pose a security risk to the Applicant. Applicant has limited contact with them. They have no affiliation with the Indian government that could create any risk.

It is noted that the current political situation in India elevates the cause for concern. In this case, the Applicant has everything to lose and nothing to gain by engaging in any improper foreign contact with India. Although the Applicant sends money to his parents in India to provide some financial support, his immediate family members reside in and are citizens of the United States. He has resided in the United States since 2001, is raising his family here, has strong ties here, his financial assets are here, and this evidence demonstrates that it is unlikely he will be placed in a position of choosing between foreign interests and U.S. interests. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the Applicant's foreign connections set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. Applicant has presented sufficient evidence in mitigation to demonstrate that he is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

- Subpara. 1.a.: For the Applicant
- Subpara. 1.b.: For the Applicant
- Subpara. 1.c.: For the Applicant
- Subpara. 1.d.: For the Applicant
- Subpara. 1.e.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge