



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



In the matter of:

ISCR Case No. 15-05497

Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: Eric Eisen, Esq.

12/02/2016

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns related to his personal and financial connections to India.

History of Case

On October 13, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 22, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 8, 2016, and requested a hearing before an administrative judge. On May 19, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. It issued a Notice of Hearing on September 14, 2016, setting the hearing for September 28, 2016. On that date, Department Counsel introduced Government Exhibits (GE) 1, 2, and 3 into evidence without objection. Applicant testified and introduced Exhibits (AE) A, B, and C into evidence without objection. DOHA received the hearing transcript (Tr.) on October 6, 2016.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. The request and the attached documents pertinent to India are included in the record as Hearing Exhibit (HE) 1, along with 10 attachments. The documents were admitted. (Tr. 9.) Applicant submitted a document for administrative notice that was marked as HE 2, and was admitted into evidence. The facts administratively noticed are limited to matters of general knowledge pertinent to India, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted the factual allegations contained in SOR ¶¶ 1.a through 1.i, and provided explanations. Those admissions are incorporated into these findings of fact.

Applicant is 50 years old. He was born in India. He graduated from an Indian university in July 1990 with a bachelor's degree, and in January 1991 he obtained a master's degree. He immigrated to the United States in August 1991. In December 1994 he earned a master's degree from a U.S. college. In December 2006 he became a U.S. citizen. (GE 1.)

From July 2004 to July 2008, Applicant was self-employed as a consultant. He then worked as a manager for a private company until June 2012, when he resumed his consulting business and obtained a contract with a company that had some Federal contracts. He continued as a consultant with that company until December 2014, when he became an employee for the company. He held a public trust clearance for about three years while working for the Federal contractor. (Tr. 35, 37, 49, 73-75; GE 1.) He said that no one in his family is aware that he has applied for a security clearance. (Tr. 50.)

In 1995 Applicant married his wife in India. She was born there and earned a master's degree from an Indian university. She subsequently immigrated to the United

States to be with Applicant. She became a naturalized U.S. citizen in December 2008. Their two children, ages 15 and 17, were born in the United States. (GE 1.)

Both of Applicant's parents were born and resided in India. His father was an economics professor at an Indian university. He died in March 2015. (Tr. 57.) His mother is 74 years old and is a resident citizen of India. She is a homemaker. (GE 1.)

Applicant is the youngest of three children, all born in India. Both sisters are citizens and residents of India. They are homemakers. He communicates with his sisters once every two or three months. One of his brothers-in-law is an assistant professor at an Indian university and the other brother-in-law is a bank manager in India. Two nephews reside in the United States. One nephew and one niece are resident citizens of India. One sister visited Applicant in the United States. (Tr. 57-59.)

Applicant's father-in-law and mother-in-law were born in India and reside there. His father-in-law is a retired civil engineer and worked for a local government. They have visited the United States a couple times. He does not provide any support for them. His wife speaks to them once every two weeks. Her siblings are permanent residents of the United States. (Tr. 48, 59-61.)

Applicant traveled to India about seven times since arriving in the United States in 1995. He went there to care for his parents, and in 2015 for his father's funeral. He visited in 1997, 2001, 2003, 2006, twice in 2014, and 2015. He stayed with his parents during those visits. (Tr. 38, 51-52.)

Applicant's mother owns her home in India. Applicant sends her between \$500 and \$800 once every two or three months to help pay living expenses. He thinks he sent about \$8,000 last year. She has a pension but it is not sufficient to pay all of her expenses. He speaks to her frequently. She has visited him in the United States three times, the last time being in 2015. He sent money to help his sick father before he died. He has no immediate plans to return to India, but may go in the future to visit his mother. (Tr. 39, 53-56, 63.)

In 2006 Applicant purchased a \$150,000 piece of property in India as an investment, which he hopes will fund his children's college costs. In 2007 his wife purchased a \$40,000 piece of property in India as an investment. (Tr. 31-35.) At the time he completed his October 2014 e-QIP, he estimated the value of his property at \$450,000 and his wife's property at \$120,000. (GE 1.) Applicant borrowed \$20,000 from a friend in India in order to purchase one of the properties. He paid the loan in full in April 2016. (Tr. 61.) He has a bank account in India related to the properties. (Tr. 67) He said that the Indian properties have a combined current estimated value of about \$300,000. When Applicant travels to India he checks the status and condition of the properties. (Tr. 65, 69, 97; AE C.)

Applicant owns a home in the United States. He also has U.S. bank accounts and a 401(k). The estimated net value of his assets in the United States is about \$160,000. (Tr. 72.)

Applicant submitted character letters. A consulting project director wrote a letter of appreciation in March 2011 commenting on Applicant's diligence and good work. Applicant received praise for a project he completed in 1999 for a city college. (AE E.)

At the hearing, Applicant sincerely expressed pride in his U.S. citizenship. He testified that neither he nor his family intend to reside in India in the future. (Tr. 41.)

India

I take administrative notice of the following facts: According to its constitution, India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion.

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

The United States recognizes India as key to its strategic interests and has sought to strengthen diplomatic and economic relationships. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist. There are also concerns about India's relations with Iran, including its increasing cooperation with the Iranian military.

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. In March 2008, an American businessman pleaded guilty to conspiring to illegally export technology to entities in India.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries

and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The U.S. and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes three conditions that could raise a security concern and be potentially disqualifying 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;¹
- (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
- (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 mother, sisters, and in-laws are citizens and residents of India. One of his friends is also a citizen and resident of India. Applicant regularly sends his mother money. He and his wife own two properties there, worth about \$300,000 that he has estimated to be worth from about \$300,000 to about \$570,000. He has an Indian bank account that he uses for managing the properties. India is the world's largest

¹The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have some human rights issues, has been victimized by terrorist attacks, and has a history of seeking restricted dual-use technology, which has been illegally exported to India from the United States. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), (b) and (e) have been raised by the evidence.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut their security significance or otherwise prove mitigation. Four mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions raised in this case:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

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

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 Applicant and his family members are vulnerable to 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 that government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Although India has a close, friendly relationship with the United States, there is evidence that India illegally targets U.S. technology, which raises a security concern about Applicant's relationship with his mother, sisters, in-laws, and friend. Hence, AG ¶ 8(a) has limited application.

Applicant produced some evidence to establish AG ¶ 8(b). He has lived in the United States since 1991. He attended a U.S. university, and has worked for U.S. companies. He became a naturalized citizen in December 2006. His wife became a naturalized citizen in December 2008. Their two children were born in the United States. He owns property and has financial accounts in the United States. He received praise from colleagues for his work performance. He considers himself to be a citizen of the United States and no longer a citizen of India. Based on those connections to the United States, there is some indication that he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) does not have application to the security concerns raised as a result of Applicant's contacts with his mother, sisters, in-laws, or friend residing in India because those contacts are sufficiently frequent and not casual. His communications have been consistent over the years, including regular transfers of money for support. He has visited his family in India at least seven times since 1995, and may return in the future.

The evidence does not establish mitigation under AG ¶ 8(f). Applicant sends his mother about \$8,000 a year to help pay her expenses. He previously sent money to his father before he died. He borrowed \$20,000 from his Indian friend to help purchase a property in India. He and his wife have assets in India that are substantially more valuable than their assets in the United States. These facts raise significant potential for conflicts of interest, and demonstrate his ongoing susceptibility to influence, pressure, or manipulation.

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.

According to 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. The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others

raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Although this case pertains to Guideline B, the security concerns do not arise from any questionable conduct by Applicant, but rather from circumstances that warrant further analysis.

Applicant is a 50-year-old man, who was born in India and has lived in the United States for about 25 years. He has been a naturalized U.S. citizen since 2006. His spouse has been a naturalized U.S. citizen since 2008. His children were born in the United States. He graduated from a U.S. university and has worked for U.S. companies for many years. He has some assets in the United States. He expressed loyalty to the United States. Those are facts that weigh in favor of granting Applicant a security clearance.

However, Applicant’s ties to India outweigh those factors. Over the past 25 years, Applicant has maintained strong connections to India through his family and finances. He has communicated regularly with family members over the years, as well as a friend. He financially supports his mother. While his ongoing financial assistance for his mother and frequent contacts with other family members commendably demonstrate devotion and affection for his family, those actions raise security concerns and potential conflicts of interest that are not easily mitigated. In addition, he has borrowed money from a friend in order to purchase a property in India. He and his wife own properties in India, which have an estimated value greater than their total U.S. assets. When he visits India he checks on his properties.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances, in the context of the whole person, I conclude Applicant did not mitigate the security concerns pertaining to foreign influence. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge