



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



In the matter of:

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) ISCR Case No.15-06107
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Applicant for Security Clearance

Appearances

For the Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Eric Eisen, Esq.

06/01/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, testimony, and exhibits, I conclude that Applicant provided adequate information to mitigate the security concerns for foreign influence under Guideline B. Eligibility for access to classified information is granted.

Statement of the Case

On August 25, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On March 26, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under foreign influence under Guideline B and foreign preference under Guideline C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on May 1, 2016. She denied the allegation of possessing a foreign passport under SOR 1.a since the passport was destroyed.¹ She denied SOR allegation 2.a concerning her mother being a resident and citizen of India since her mother had passed away.² She admitted the other four allegations under Guideline B. Department Counsel was prepared to proceed on August 12, 2016. The case was assigned to another administrative judge on February 13, 2017. DOD issued a notice of hearing on March 2, 2017, for a hearing on March 29, 2017. The other administrative judge was not available to hear the case as scheduled, and I was assigned the case on March 28, 2017. I convened the case as originally scheduled. The Government offered two exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 and 2. Applicant testified and offered two exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A and B. AX B consisted of six letters of recommendation. I received the transcript of the hearing (Tr.) on April 7, 2017.

Procedural Issues

Department Counsel requested that I take administrative notice of certain facts concerning India, and provided relevant U.S. Department of State documents. (GX 2) I will take administrative notice of facts concerning India as noted in my Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 43 years old, and a software developer for a defense contractor. Applicant was born in India, and received a bachelor's degree in architecture in 1999 from a college in India. She worked in India as an architect from 1999 to 2000. Applicant's husband was born and raised in India, but was a United States citizen living and working in the United States when they married in India in April 2000. Applicant moved to the United States to live with her husband after they married. They have two young boys who were born in the United States and are United States citizens. She studied at a United States university and received a master's degree in information systems in 2003. Applicant became a United States citizen in April 2009. (Tr. 14-16; GX 1, e-QIP, dated August 25, 2014)

Applicant worked as a software developer for various United States businesses from 2003 until 2011. During this time, she took time to have and care for her children. Applicant's husband had business interests in both the United States and India and he traveled back and forth between the two countries. They maintain their permanent home in the United States (Tr. 14-22)

The SOR alleges and Applicant admits that her father, sister, and mother-in-law are residents and citizens of India. (SOR 1.b, 1.c, and 1.d) Applicant also admits that

¹ Department Counsel withdrew allegation SOR 1.a. (Tr. 8)

² Department Counsel withdrew allegation SOR 2.a. (Tr. 10)

her husband has business assets in India. The SOR alleges that Applicant's husband's financial interests in India are valued at \$744,000. A detailed list of his assets shows the present value is substantially less at approximately \$149,000. Applicant and her husband's joint assets in the United States are valued at approximately \$660,000. (AX A, Spreadsheet)

Applicant has two sisters. One is a citizen and resident of the United States employed as a project manager. Her other sister is a homemaker who is a citizen and resident of India. She also tutors high school students. Her sister's husband is a college professor. Applicant talks to this sister approximately twice a week by phone. (Tr. 28-29)

Applicant's father is a retired car manufacturing engineer. He spends half of his time in India and half of his time in the United States staying with Applicant or her sister and visiting his grandchildren. Applicant speaks to him weekly when he is in India or visiting her sister. He receives a pension from his former employer. (Tr. 29-30)

Applicant's mother-in-law is a homemaker and a citizen and resident of India. Applicant talks to her about four times a year by telephone. Her financial support is from her late husband's assets and retirement. (Tr. 30-31)

Applicant's father-in-law operated an irrigation equipment company in India. He died in 2012. When Applicant's husband visited India before his father died, he helped run the company. After his father died, Applicant's husband and his mother each inherited half of the business. They shut the business down and are in the process of disposing of the assets. The business was valued at approximately \$135,000. Her mother-in-law is self-sufficient receiving assets from her late husband's business. (Tr. 24-25, 35-37)

Applicant and her two sons returned to live in India in 2011 to care for her mother. Since her husband was traveling to India periodically for business, Applicant's family kept their home in the United States and rented it out. Her oldest son was an elementary school student, but he did not do well in the India school system. When her mother passed away in 2014, Applicant and her family returned to the United States and moved back into their home. Her son is now doing well in his education in the United States. Applicant participates in community activities, and in activities at her sons' school. The family enjoys traveling in the United States and celebrating American holidays. Applicant only returned to India for two weeks in 2015 to commemorate the traditional one-year anniversary of her mother's death. (Tr. 20-28, 32-33)

Applicant's husband's principal employment is with a United States quasi-government organization. He also had interests in two businesses that operated in India and the United States. One business manufactured and installed solar panels in the United States. The company started in the United States but had supply chain problems so the manufacturing moved to India. The company did not thrive and dissolved in 2016/2017. All assets were sold and her husband lost his investment in the company. (Tr. 22-23)

The second company is an investment partnership in a computer data mining company. The company started in India and then moved its headquarters to the United States since its principal client is a United States business. The company employs about 100 people. Some of the work is done in India and some is done in the United States. Applicant's husband does not receive any income from the business but his investment is valued at approximately \$34,000. Applicant's husband's business interests in India are decreasing and are now valued at less than \$200,000. (Tr. 39-42)

Applicant presented letters of recommendation. The president of the company she works for has known her for over ten years. He sees her daily. She demonstrates allegiance to the United States. She is careful to obey all rules and regulations, and diligently safeguards all information. She is a true professional with integrity and is highly regarded by her co-workers. He recommends that she be granted eligibility for access to classified information.

A number of Applicant's co-workers, neighbors, and friends wrote that she is a responsible person and citizen. She participates in community activities and volunteers at her children's school. She is a "straight shooter", dependable, with integrity. The writers of the letters note that Applicant is the embodiment of American values. She loves and respects the United States and its values. She takes pride in calling herself an American citizen.

India is a multiparty, parliamentary democracy with a population of approximately 1.2 billion people. The United States and India share common values including the rule of law, respect for diversity, and democratic government. The United States Department of State reported in 2012 that bilateral defense and counterterrorism cooperation between the United States and India had grown to reach unprecedented levels. In 2009, the United States and India launched the United States-India Strategic dialogue which is a bilateral forum focused on strengthening cooperation between the two countries in several areas, including energy, climate change, trade, education, and counterterrorism. The United States supports a reformed United Nations Security Council that includes India as a permanent member. The United States is one of India's largest trade and investment partners. In January 2015, President Obama and Indian Prime Minister Modi lauded the close and growing ties between the United States and India.

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage identified India, along with seven other countries, as being involved in criminal espionage of United States trade secrets. There were export control enforcement cases in 2008 against India or Indian businesses. There have been recent criminal cases in the United States 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.

India and Pakistan have been locked in a tense rivalry since the partition of the subcontinent following independence from Great Britain in 1947. India continues to

experience terrorist and insurgent activities that may affect U.S. citizens. Anti-Western terrorist groups, some on the United States Government's list of foreign terrorist organizations, are active in India. India remains subject to violent terrorists attacks and continues to be one of the most persistently targeted countries by transnational and domestic terrorist groups.

According to the United States Department of State's 2015 Human Rights Report, the most significant human rights problems in India were police and security forces abuses, including extra judicial killings, torture, rape, and widespread corruption at all level of government. The United States and India share a number of security perspectives, including, those on China, and the Asian balance of power, terrorism, Afghanistan, maritime issues, and weapons of mass destruction. India also has a long-standing military supply relationships with Russia, and Russia remains India's largest supplier of military systems and spare parts. India has remained reticent to discuss its nuclear security measures or allow inspections. India has also refused to accede to the nuclear Non-Proliferation Treaty despite United States policy supporting its universality. (GX 3, Request for Administrative notice and Supporting Documents)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Foreign Influence

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 the United States interest, 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 consideration 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 ¶ 6)

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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government and its relationship with the United States 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.

The SOR alleges, and Applicant admits, that her father, sister, and mother-in-law are citizens and residents of India. She also admits that her husband has financial interests in India. Applicant's family members who are citizens and residents of India as well as her husband's financial interest in India are a foreign influence security concern.

Four disqualifying conditions are relevant to the security concerns raised in the SOR under 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;
- (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;
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. AG ¶¶ 7(a), 7(d), and 7(e) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member or contacts living under a foreign government. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The Government has established that Applicant's family in India may be under a "heightened risk" of security concern because of the potential for criminal espionage targeted at the United States, terrorist activities and threats, targeted intelligence activities, and human rights violations in India. An applicant with foreign family or friendship ties to a country that presents a heightened risk has a heavy burden of persuasion to show that neither she nor the family members are subject to influence by that country. The totality of an applicant's family and friends ties to a foreign country as well as the tie to the country for each individual person must be considered.

Applicant raised facts to mitigate the security concerns arising from her family members in India. I have considered the following Foreign Influence Mitigating Conditions under 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.;

(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 or 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.

In evaluating the potential conflict of interest because Applicant's has financial interests in India and her family members are citizens and residents of India, I considered that India is a strong ally of the United States with mutual defense and strategic interests; that India is a substantial trading partner of the United States; and that India cooperates with the United States on many military matters. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Even friendly countries may engage in espionage against the United States' economic, scientific, or technical interest. I have also considered the on-going situation in India with extensive terrorist activities and human rights issues. Even though India is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the terrorist situation and groups in India could take an action that may jeopardize their friendly position with the United States. There are indications that elements in India could seek sensitive information from their citizens who have family in the United States.

I have considered Applicant's relationship with her father, sister, and mother-in-law, who are citizens or residents of India. Applicant has been open and candid about her foreign relatives. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. Factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant's family circumstances pose a security concern.

Applicant's contacts with her family members in India are close and frequent. Applicant has substantial contact with her sister in India. She talks to her almost daily. She talks to her father every few days when he is not visiting the United States. She talks to her mother-in-law a few times a year. Applicant has not rebutted the presumption that the contacts and communications with her family members are not

casual. The communications and contacts between Applicant and her family members are frequent and substantial. Her family members could create a risk for foreign influence or exploitation. Because of the terrorist activity in India, Applicant may likely be placed in a position of having to choose between her family members and the U.S. interests. AG ¶ 8 (a) and (c) do not apply.

Applicant has strong ties to the United States. She came to the United States and became a U.S. citizen at the first opportunity. Her children are U.S. native-born citizens. She and her family are contributing members of the community where they reside. She embraces the culture, values, history, and lifestyle of the United States. Applicant's has substantial property and financial assets in the United States. She has firm ties to the United States and considers it home.

The nature of Applicant's financial interests in India do not subject her to a heightened risk of foreign influence. The property interests are her husband's business interests that are decreasing in value. One business is family-owned and is the process of being liquidated. Another is a business that did business in both India and the United States but has been dissolved. The principal client for the third business which is still operating is a corporation in the United States. These are normal routine business interests with commercial ties to the United States. Because of the business ties to the United States, it is unlikely that the business interests will result in a conflict or could not be used effectively to influence, manipulate, or pressure Applicant's husband, and thereby Applicant. Disqualifying condition AG ¶ 8(f) applies.

Applicant's loyalty to the United States is unquestioned. She has immediate family members who are citizens and residents of the United States. Her immediate family, husband and children, are U. S. citizens and residents. Her sister and her family are citizens and residents of the United States. Her father spends considerable time each year living in the United States. Applicant has established that it is unlikely that she could be placed in a position to choose between any sense of loyalty or obligation to her family members in India and her sense of loyalty or obligation to the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that she can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. The mitigating conditions in AG ¶¶ 8(b) apply.

Applicant has met her heavy burden to show that her family members who are citizens and residents of India do not cause a security concern. I conclude that Applicant has mitigated security concerns for foreign influence.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered the information about Applicant's reputation in the company for hard work, honesty, loyalty, job performance, and contributions to her company's mission. The whole-person concept requires consideration of all available information about Applicant, not single items in isolation, to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant has contact with family members and financial interests in India. However, Applicant established that she has such strong relationships and loyalties in and to the United States that she can be expected to resolve any conflict of interest in favor of the United States. While access to classified information is not based on a finding of loyalty to the United States, Applicant established her deep and abiding commitment to the protection of United States interests. Applicant, her husband, and her children are residents of the United States and solely United States citizens. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has met the heavy burden of mitigating potential security concerns arising from family members and financial interests in India. Applicant mitigated foreign influence security concerns and access to classified information is granted.

Formal Findings

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

Paragraph 1, Guideline C:

FOR APPLICANT (WITHDRAWN)

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 2.a: Withdrawn

Subparagraphs 2.b – 2.e: 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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge