



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



In the matter of:)	
)	
[Name redacted])	ISCR Case No. 15-06593
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Charles Hale, Esquire, Department Counsel
For Applicant: *Pro se*

09/26/2017

Decision

HOGAN, Erin C., Administrative Judge:

On March 19, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concern under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on September 1, 2006. On June 8, 2017, the AGs were updated and cancelled the AGs effective September 2006. This decision will be decided based on the new AGs. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On March 29, 2016, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 19, 2016. The case was assigned to another administrative judge on February 15, 2017. The case was transferred to me on May 22, 2017. On June 22, 2017, a Notice of Hearing was issued, scheduling the hearing for July 19, 2017. The hearing was held as scheduled. During the hearing, the Government offered two exhibits which were admitted without objection as Government (Gov) Exhibits 1 - 2. Applicant testified and offered one exhibit, which was admitted as Applicant Exhibit (AE) A, without objection.

The Government requested administrative notice be taken of certain facts regarding the country of India. The administrative notice document was marked as Hearing Exhibit (HE) I. After the hearing, Applicant submitted an additional document. It was marked and admitted as AE B. Department Counsel had no objection to AE B. The transcript was received on July 26, 2017. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice – India

The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute.

India is a multiparty, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. India has diplomatic relations with the United States. India and the United States pledged that both countries promised greater cooperation in countering terrorist networks and information sharing. India continues to experience terrorist and insurgent activities which may affect U.S. citizens directly or indirectly. Anti-Western terrorist groups, some on the U.S. government's list of foreign terrorist organizations, are active in India. Past attacks have targeted public places, including some frequented by Westerners, such as luxury and other hotels, trains, train stations, markets, cinemas, mosques, and restaurants in large urban areas.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. The United States recognizes India is important to the United States strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law.

The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in fighting terrorism, creating a strategically stable Asia, and the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean.

In the past, India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and industrial espionage directed at the United States. The United States has economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian government generally respects the rights of its citizens, but continues to have serious human rights problems including police and security force abuses,

extrajudicial killings, disappearances, torture, rape, and widespread corruption that contributed to ineffective responses to crimes. Other human rights problems include disappearances, hazardous prison conditions, arbitrary arrest and detention, and lengthy pretrial detention. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remain serious problems. A lack of accountability for misconduct at all levels of government persists. Investigations and prosecutions of individuals take place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contribute to infrequent convictions. (Admin Not 1)

Findings of Fact

Applicant is a 46-year-old employee of a Department of Defense contractor who is applying for a security clearance for the first time. She has worked for her employer since June 2000. She is married and has no children. (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant's and her family's privacy. The cited sources contain more specific information.) (Gov 1)

Applicant was born and raised in India. She was educated in India. She was awarded a college degree from a university in India. In 1999, she moved to the United States on a permanent basis. She became a U.S. citizen in 2008. Her husband is also a United States citizen and resides in the United States. (Tr. 47-48; Gov 1)

Applicant's father, father-in-law, and sister are citizens of and reside in India. Her mother-in-law passed away in 2015. Her father was an engineer for the Indian Nuclear Fuel Complex, but retired 15 years ago. Her mother is a housewife. Her sister is a teacher. Her father-in-law was employed by the Indian State Department of Revenue, but retired 36 years ago. (Tr. 16, 37-41)

Applicant has traveled to India to visit her family on several occasions. In October 2003, she traveled to visit her family for more than 30 days. It was the first time she traveled to India since moving to the U.S. in 1999 and after becoming a U.S. permanent resident. In 2005, she traveled to India to attend her sister's funeral. In 2006, she travelled to India to attend the wedding of her husband's niece and to visit with family. In 2007, she traveled to visit her father-in-law who received a cancer diagnosis. In 2010, she traveled to visit her mother who had health issues. In 2014, Applicant traveled to India to attend her mother's funeral. In February 2015, she traveled to India to attend her mother-in-law's funeral. She and her husband have not traveled to India since this trip. She will travel to visit her father in the future, but currently there are no trips planned. (Tr. 18 – 26; Gov 1, section 20C)

Applicant and her husband have several bank accounts in India. Applicant has a bank account solely in her name with a balance of \$3,500. In January 2014, she was listed as a co-owner of a joint account with her husband that has a balance of \$33,000. They also share a joint bank account with a \$1,500 balance. Applicant does not use these accounts on a regular basis. They access the accounts when they visit India. They do not rely on the accounts for income. (Tr. 27-30; Gov 1 at 30 – 31)

Applicant and her husband own several properties in India. In March 2007, they purchased an apartment for \$28,000. Applicant's father has a power of attorney and manages the apartment property. They also own two parcels of land. One parcel was purchased in April 2008 for \$8,000. The other parcel in 2006 for about \$2,000. Both parcels are undeveloped and were purchased for investment purposes. (Tr. 30-36; Gov 1 at 30-34) They have no additional foreign properties or accounts.

Applicant testified that presently the total cash value of the bank accounts in India was between \$25,000 and \$30,000. The total cash value of the apartment and properties in India is around \$17,000. (Tr. 45-46) She earns an annual salary in the U.S. of approximately \$150,000. Applicant's total assets in the U.S. are valued at around \$1 million. (Tr. 48-49; AE B at 2)

After becoming a U.S. citizen, Applicant traveled to India with her U.S. passport and her Overseas Citizen of India (OCI) card. When Applicant became a U.S. citizen, she renounced her Indian citizenship. Applicant's OCI card is essentially a multiple entry visa and facilitates her travel to India. It does not grant any privileges of Indian citizenship, except for unlimited travel to and from India. (Tr. 18 42-44; AE A at 4-5)

The chairman and CEO of Applicant's company provided a letter on her behalf. He states Applicant is a highly professional and trustworthy employee. She has been an employee for 17 years. He describes Applicant as sincere, hardworking, and reliable. She respects privacy rules, laws, and regulations. The company trusts her and has no reason to doubt or question her ethics and worth. In June 2016, she was Employee of the Month. He recommends Applicant for a security clearance. (AE A at 3)

Applicant testified that she considers the national security of the U.S. as a prime responsibility. She would never do anything to compromise U.S. national security. (Tr. 17)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the 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 the adjudicative process. The administrative judge's over arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 for national security eligibility 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.

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

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 that 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Guideline B, Foreign Influence

AG ¶ 6 explains the Government’s concern under Foreign Influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying. The following apply to Applicant’s case:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

Several foreign and indigenous terrorist groups within India create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) raises a security concern regarding Applicant's immediate family members including her father-in-law, who are citizens of and reside in India.

AG ¶ 7(b) is applicable because Applicant's connections with her extended family members in India create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and her desire to help her extended family members by providing that information.

AG ¶ 7(f) applies because Applicant has several bank accounts and several properties in India, to include an apartment and two small parcels of land.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Of these conditions, four potentially apply to Applicant's 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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.

AG ¶ 8(a) applies because Applicant's family members in India are not in positions that may result in her having to choose the interests of the foreign government over the interests of the United States. Applicant's father has been retired for over 15 years. Her father-in-law has been retired for over 35 years. Her sister is a teacher. Her family members in India are not in positions that may make Applicant vulnerable to compromise.

I find AG ¶ 8(b) applies. While Applicant has familial obligations to her relatives and in-laws who are citizens of and reside in India, her husband resides with her in the United States. He is a U.S. citizen. Applicant has longstanding ties to the United States, having lived in the United States since 1999. She has worked for the same company in the United States for 17 years. Applicant can be expected to resolve any conflict in favor of U.S. interests.

AG ¶ 8 (c) does not apply because Applicant's relationship with her family members in India cannot be described as casual and infrequent.

AG ¶ 8(f) applies. Applicant's assets in the United States are over \$1 million. While she and her husband have some bank accounts and own some real estate in India, the value of Applicant's U.S. assets far outweigh the value of her assets in India. This makes it unlikely that a conflict would arise regarding Applicant's assets in India that would place her in a compromising position. Security concerns raised under Foreign Influence are mitigated.

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(d):

(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 a security clearance 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 Applicant moved to the United States in 1999. She and her husband are U.S. citizens. She has worked for the same company since 2000 and is a highly regarded employee. While Applicant is close to her immediate family members and in-laws who reside in India, she has established herself in the United States. She has a successful career. Her assets in the United States outweigh her assets in India. Applicant mitigated the concerns raised under Foreign Influence.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
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Subparagraphs 1.a – 1.f:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge