



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



In the matter of:

ISCR Case No. 15-07079

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

August 8, 2017

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On April 21, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B.¹ (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

On May 17, 2016, Applicant submitted a written reply to the SOR, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On August 15, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 22, 2016. Applicant submitted one additional document, a letter from, her which has been identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on June 5, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Procedural Rulings

In the FORM, the Government requested I take administrative notice of certain facts relating to India. Department Counsel provided a summary of the facts, supported by Item 5. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact.

Applicant is 38 years old. She was born in India. She moved to the United States in 2002, and she became a naturalized United States citizen in 2010. Applicant is married, and she and her husband have two children. Applicant's husband was born in India, and her husband is an Indian citizen. Her two children are United States born citizens. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Items 3 and 4.)

Guideline B - Foreign Influence

The SOR lists seven allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's parents and three siblings are citizens and residents of India. Applicant admitted this allegation in her RSOR, and she wrote that this should not be a concern because her husband has lived in the United States for 16 years; she has lived in the United States for 13 years; and her two children are United States born citizens. She also added that they are going to live the rest of their lives in the United States. (Item 3.)

In a post-FORM submission, Applicant wrote that her elder sister works in a branch of the Indian government as a civil engineer where she creates floor plans for construction. Applicant's younger sister was working for a bank, but she resigned her position six months ago, as she has become pregnant and plans to be a housewife. (Item A.)

2.b. It is alleged in the SOR that Applicant's parents-in-law are citizens and residents of India. Applicant admitted this allegation in her RSOR, and she added the same answer concerning them that she had provided to 1.a., above. (Item 3.)

In her post-FORM submission, Applicant wrote that her father-in-law was a farmer but is now weak and sick, has had bypass surgery, and has stopped working. (Item A.)

2.c. It is alleged in the SOR that Applicant and her spouse maintain a bank account in India with an approximate value of \$6,000. Applicant admitted this allegation in her RSOR, and she wrote that this money is kept there for medical emergencies for her parents. Her father is 74 and her mother is 66; they have no income and are financially dependent on her. (Item 3.)

2.d. It is alleged in the SOR that Applicant's spouse maintains five bank accounts in India with an approximate value of \$27,000. Applicant admitted this allegation in her RSOR, and she wrote that her husband is the eldest son in his family, and he is responsible to take care of his parents and siblings. She added that they are financially dependent on her husband, as her father-in-law is retired and has no income. (Item 3.)

2.e. It is alleged in the SOR that Applicant's spouse owns eight properties in India with an approximate value of \$560,000. Applicant admitted this allegation in her RSOR, and she wrote that most of the property was inherited from Applicant's husband's father and a few were bought in Applicant's husband's name before he moved to the United States. (Item 3.)

Applicant wrote that of the eight properties owned by her husband, five of them were inherited from his father, and three were purchased directly by Applicant's husband. (Item A.)

2.f. It is alleged in the SOR that Applicant's spouse owns an Indian life insurance policy with an approximate value of \$9,000. Applicant admitted this allegation in her RSOR, and she wrote that her husband purchased this policy before he moved to the United States. He has not cancelled the policy, because if he did he would lose all the money paid for the policy many years ago. (Item 3.)

Finally, Applicant wrote that in 2004, before she became a United States citizens she and her husband had contemplated moving back to India, which is the reason they invested in India. Subsequently, they had two children, purchased a house in the United States, and decided to stay in the United States. She also pledged to be loyal and honest to the United States, as she would like to work for this country. (Item A.)

Current Status of India

I take administrative notice of the following facts regarding India. According to its constitution, India is a “sovereign, socialist secular democratic republic.” It is a multiparty, federal parliamentary democracy and has a population of approximately 1.1 billion people. The United States recognizes India as a key to interests of the U.S., and it has sought to strengthen its relationship with India. However, differences do remain between the two countries, including the concern of the U.S. over India's nuclear weapons program, its abuses of human rights, and its continued, increasing cooperation with Iran. Finally, India has been identified as one of the most active collectors of sensitive U.S. economic and proprietary information. (Item 5.)

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 are to be used 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, administrative judges apply the guidelines 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(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 national security eligibility 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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.

Section 7 of Executive Order (EO) 10865 provides that adverse 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).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Disqualifying conditions (b) and (f) are potentially applicable in this 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;
- (c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;

(e) shared 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;

(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;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has a significant number of close family members, including her parents, three siblings, and parents-in-law, who are citizens and residents of India. Both her parents and her husband's parents rely on the financial support of Applicant and her husband. Additionally, Applicant and her husband have substantial financial and property interests in India. Applicant and her husband do own a home in the United States, but the value of the home is unknown. Meanwhile the value of the assets in India is worth more than \$600,000. Applicant's familial ties to the United States are limited to only her husband, who is not a United States citizen, and their two children. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Because of the strong familial ties to India and the substantial financial and property interests in India, I do not find that any of the mitigating factors are applicable in this case.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security

clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence security concerns under the whole-person concept.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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.

Martin H. Mogul
Administrative Judge