



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



In the matter of:

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) ISCR Case No.15-07588
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Applicant for Security Clearance

Appearances

For the Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Phillip Zuber, Esq.

12/08/2017

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 April 22, 2015, 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 May 7, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under foreign influence under Guideline B. 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 June 6, 2016. She admitted the four allegations under Guideline B, but denied that they were a security concern. Department Counsel was prepared to proceed on August 6, 2016. The case was assigned to me on March

21, 2017. DOD issued a notice of hearing on July 20, 2017, for a hearing on August 14, 2017. I convened the case as 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 nine exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through I. I received the transcript of the hearing (Tr.) on August 21, 2017.

Procedural Issues

Department Counsel requested that I take administrative notice of certain facts concerning India, and provided relevant United States 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 51 years old. She has a private law practice as well as being counsel for a defense contractor. She is highly regarded by the president and chief executive officer of the defense contracting firm. The defense contractor is sponsoring her for eligibility for access to classified information. (Tr. 16-17, AX C, Letter, dated August 10, 2017)

Applicant was born in India. She graduated from high school in India in June 1984. She received a bachelor's degree in India in April 1988. She came to the United States in August 1988 to complete her education. She had a full scholarship and was a graduate teaching assistant. She received a master's degree in January 1991 and a doctorate in May 1995. She then attended law school, receiving her juris doctor degree in December 1999. She is admitted to the practice of law in her home state and two neighboring jurisdictions. She received a master's degree in business administration in May 2002. (Tr. 19-25; GX 1, e-QIP, dated April 22, 2015; AX B, Juris Doctor Certificate; AX E, Master's Degree; AX F, Doctorate; AX G, Master of Business Administration)

Applicant was married in the United States in November 1998 but the marriage was annulled in May 1999. Her former husband was born in India and is now a permanent resident alien in the United States. She has little contact with him. (Tr. 19-20)

Applicant became a United States citizen in 2002. The only passport she has is a United States passport. Applicant is in a committed relationship with a United States citizen. They have one child. Applicant owns her house in the United States which has an equity value of approximately \$145,000. She owns a rental property with an equity value of \$70,000, a beach property with an equity value of \$75,000, as well as a town house. She has a retirement account in the United States, with a balance of approximately \$500,000. She has no property interests in India, and receives no financial or other benefits from sources in India. She has only voted in elections in the

United States. She traveled to India in 2004, 2006, and 2010. (Tr. 25-29; AX A, House Deed; AX D, Passport; AX H, Rental Property deed).

The SOR alleges and Applicant admits that her mother, father, brother, and one sister, are residents and citizens of India. (SOR 1.a, 1.c, and 1.d) Applicant also admits that her father was a doctor in the Indian army. (SOR 1.b) Applicant has a sister who is a resident and citizen of the United States. She is not a security concern.

Applicant's mother is 75 years old. She retired from teaching in the local school system in 2002. She has never been employed by the Indian government. She and her father together own their apartment in India. Her mother has no financial interests in the United States. Her mother last traveled to the United States in 2002 when Applicant's sister had her child. Applicant contacts her mother about once a week by telephone or internet. Applicant does not provide her mother with any financial support. (Tr. 30-32)

Applicant's father is 82-years old and a retired doctor. Her father was a doctor in the Indian Army for 22 years, from 1962 until 1984. In 1984 after retiring from the Indian army, he established his own private medical practice. He fully retired from medical practice in 2015. Her father also traveled with her mother to the United States in 2002. She communicates with her father about once every few months since he is not as versed in electronic communications as her mother. She does not provide him any financial support. (Tr. 32-34)

Applicant's brother is 46 years old and is a public relations officer in a pharmaceutical corporation in India. He never worked for the government or military in India. He is married and his wife works in information technology for a corporation in India. He has no financial interests in the United States. He last traveled to the United States in 2012. Applicant has regular electronic communications with her brother. They do not provide each other financial support. (Tr. 34-36)

Applicant's sister in India is a twin of her brother. She works for a United Nations organization. Her husband is a college professor. She has no financial interests in the United States, and the sisters do not provide each other financial support. Her sister last traveled to the United States in 2007. Applicant and her sister are now estranged and they last communicated in 2010. (Tr. 36-39)

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 2016 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.¹

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,

¹ GX 2, Request for Administrative Notice and Supporting Documents.

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 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 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 mother, father, brother, and sister are citizens and residents of India. Applicant's family members who are citizens and residents of 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, 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 sensitive or classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(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; and

(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 heightened risk of foreign influence or exploitation or personal conflict of interest.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. AG ¶¶ 7(a) and 7(d) 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, or allegiance to the 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 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 mother, father, brother, and sister, 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 post a security concern.

Applicant's contacts with her family members in India, except her sister, are close and frequent. Applicant has substantial contact with her mother and brother in India. She talks to them almost weekly. She talks to her father every few months. She has not communicated with her sister in over seven years. Applicant has not rebutted the presumption that the contacts and communications with most of her family members are not casual. The communications and contacts between Applicant and her family members, except her sister, are frequent and substantial. These 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 these family members and the U.S. interests. AG ¶ 8 (a) and (c) do not apply, except to her sister.

Applicant has strong ties to the United States. She came to the United States to study. She has excelled in her education and has multiple degrees and professions. She became a U.S. citizen at the first opportunity. Her child is a U.S. native-born citizen. Applicant embraces the culture, values, history, and lifestyle of the United States. Applicant has substantial property and financial assets in the United States. She has firm ties to the United States and considers it home.

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, partner and child, are U. S. citizens and residents. Her sister and her family are citizens and residents of 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. 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 partner, and her child 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 B:

FOR APPLICANT

Subparagraphs 1.a - d:

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