



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.16-00815

Appearances

For the Government: Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro Se*

05/11/2018

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 8, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on December 11, 2015. After reviewing the report of the OPM security investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On July 29, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for 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 September 13, 2016. admitting six allegations under Guideline B (SOR 1.a, b, c, d, f, and g), and denying two allegations (SOR 1.e and h). Department Counsel was prepared to proceed on February 27, 2017. The case was assigned to me on September 26, 2017. DOD issued a notice of hearing on February 27, 2018, for a hearing on March 19, 2018. I convened the case as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1, 2, and 3. Applicant testified and offered ten exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through J. While I did not keep the record open, Applicant timely forwarded information concerning his nieces residing in the United States that I admitted into the record and considered as AX K. Department counsel had no objection to consideration of the information. (GX 4) I received the transcript of the hearing (Tr.) on March 26, 2018.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGS), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs, and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

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 3) I will take administrative notice of facts concerning India as noted in my Findings of Fact.

Applicant was advised at the hearing that the summary of the Personal Subject Interview (PSI) with an OPM investigator (GX 2) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. Applicant noted that some of the information reported by the security investigator was not clear. (GX 2, at page 7) After the information and report were clarified for Applicant, he did not object to the admissibility of the PSI summary. (Tr. 13-18) I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 47 years old. He was born in India and received all of his education in India. He came to the United States in 2000 for work, and was sponsored by a bank as a computer engineer on an H1 professional worker visa. He

became a U.S. citizen in 2013, and formally renounced his Indian citizenship which was accepted and approved by the Indian authorities. (Tr. 31-32, 38-39; AX J, Citizenship Renunciation). He worked for various U.S. Government agencies as a contractor computer engineer, and received a public trust position in 2002. There are no reports of any problems or issues concerning his access to sensitive public trust information.

Applicant married in India in 2002, and his wife came to the United States in approximately 2003. She became a U.S. citizen in 2017. He has two children born in the United States who are U.S. citizens. His yearly income is approximately \$100,000, and his wife's yearly income is approximately \$125,000. He has approximately \$43,000 in his 401(K), and his wife has approximately \$75,000 in her 401(k). He usually travels to India once a year and stays for approximately a week or two. One niece is the only family member that has visited him in the United States. (Tr.19-20, 33-34, 39-40, 51-54; AX A, Applicant's wife U.S. Citizenship document; AX B, Applicant's U.S. citizenship document)

The SOR alleges (SOR 1.a), at the time it was drafted, that Applicant's wife is a citizen of India. Applicant established that his wife is now a United States citizen.

The SOR alleges, and Applicant admits in part that his five siblings and his mother-in-law and father-in-law are citizens and residents of India. (SOR 1.b and 1.c) The SOR alleges and Applicant admits that he has family members who are citizens and residents of India. (SOR 1.d) The SOR alleges that his wife has siblings and family members who are citizens and residents of India. (SOR 1.e) He denies the allegation in part because two brothers-in-law are permanent residents of the United States and have applied for United States citizenship. The SOR alleges that Applicant has two college friends who are citizens and residents of India. (SOR 1.f) Applicant denies this in part since one of the friends is now a permanent resident of the United States. The SOR alleges that he owns property in India valued at \$75,000 (SOR 1.g). He admits that he jointly owns with his brothers-in-law investment property in India valued at approximately \$75,000. The SOR also alleges that he sent \$100,000 yearly to India to support to his father and siblings (SOR 1.h). He denies that he sends \$100,000 a year to support his father and siblings. He admits sending support to his father over many years for medical and elder care that may amount to \$100,000.

Applicant has five siblings who are citizens and residents of India. They are farmers and housewives and have no affiliation with the government. He is the fourth sibling, and the three oldest are over 55 years of age. He tried to get them to come and live in the United States, but they are concerned because they do not speak English. He has sponsored a number of their children, his nieces and nephews, for schooling, work, and residence in the United States. He is still trying to convince his youngest siblings to come to the United States. He usually communicates with his siblings by phone some weekly, some monthly, some only a few times a year. He sees them when he travels to India. (Tr.35-36, 39-40)

Applicant's father-in-law died in September 2016. His mother-in-law is a housewife in her late 60s, and does not like to travel. He talks to her occasionally by phone when his wife talks to her. (Tr. 36)

Some of Applicant's and his wife's extended family members are citizens or residents of India. His wife has two siblings who are residents of the United States and are seeking permanent residency so they can become U.S. citizens. One sibling is a farmer in India. The other is a homemaker and resides with her husband, a merchant, in Singapore. Applicant and his wife are supporting their quest to come to the United States. Applicant has very limited if any contact with his wife's siblings that reside in India. (Tr. 36, 44-46)

Applicant admits he has two friends from college that he occasionally contacts. One is still a resident and citizen of India. He has contact with this friend about once every six months. The other is a resident of the United States and he sees him also about every six months. (Tr. 36-37; AX D and E, Permanent Resident Card and Driver's License)

Applicant admits he owns an interest in property in India which he purchased in partnership with his brothers-in-law before becoming a United States citizen. His brothers-in-law have been permanent residents of the United States for over ten years. The purchase price for the land was \$75,000, but it is now valued at approximately \$65,000. The property was purchased as an investment with the hopes of building on the property and renting it. However, there has been no attempt to construct a building on the property and the land is still vacant. They tried to sell the property for almost two years, but they are missing a legal document and the value has decreased to the extent that it is not a good time to sell. (Tr. 45-49; AX F, G, H, and I, Permanent Resident and Driver's Licenses)

Applicant admits sending money to his father in India when he was alive for medical and geriatric care as a payback for funding his education. Even though his father has deceased, he will send money to his siblings and their family members if asked and it is needed. Over the years, he may have sent approximately \$100,000 to his family in India. Since his father passed away, he sends no more than a few thousand dollars at a time, and no more than \$15,000 a year. (Tr. 56-58)

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 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 terrorist 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 force 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 3, 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 his five siblings, his mother-in-law, and various relatives and friends are citizens and residents of India. Applicant's family members and friends 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), 7(d), 7(e), and 7(f) 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 he 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 ties to the country for each individual person must be considered.

Applicant raised facts to mitigate the security concerns arising from his family members and friends 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 his siblings, mother-in-law, family members, and friends who are citizens or residents of India. Applicant has been open and candid about his 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 his family members in India, are close and frequent. Applicant talks to them often, almost weekly. His contact with his friends is not close or as frequent. Applicant has not rebutted the presumption that the contacts and communications with most of his family members are not casual. The communications and contacts between Applicant and his family members 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.

Applicant has strong ties to the United States. He came to the United States under the professional worker's visa program. He worked as a contractor for various U.S. Government agencies and was granted a public trust clearance. There were no issues raised concerning his access to sensitive public trust information. He has excelled in his occupation and owns his own business. He became a U.S. citizen at the first opportunity. His wife and children are U.S. citizens. Applicant has shown that he embraces the culture, values, history, and lifestyle of the United States. Applicant's has substantial financial assets in the United States that offset the value of the undeveloped land in India. His limited and shared interest in the land in India is unlikely to result in a conflict and cannot be used to influence or pressure Applicant. He has firm ties to the United States and considers it home.

Applicant's loyalty to the United States is unquestioned. He has immediate family members who are citizens and residents of the United States. He has enabled and encouraged other family members to come to and live in the United States and become United States citizens. Applicant has established that it is unlikely that he could be placed in a position to choose between any sense of loyalty or obligation to his family members in India and his 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 he 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) and 8(f) apply.

Applicant has met his heavy burden to show that his family members and friends 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 property interests in India. However, Applicant established that he has such strong relationships and loyalties in and to the United States that he 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 his deep and abiding commitment to the protection of United States interests. Applicant and his immediate family 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 property 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 – 1.h: 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