



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



In the matter of:)
)
) ISCR Case No. 16-04013
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

06/29/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen from India, has demonstrated sufficient financial and familial ties to the United States to mitigate the foreign influence concerns raised by his connections to India. He has also mitigated the concerns raised by the two security violations he received in 2014. The violations were inadvertent, and did not result in the compromise of classified information. Clearance is granted.

Statement of the Case

On May 2, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and handling protected information guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on February 13, 2018, I admitted Government's Exhibits (GE) 1 and 5, and Applicant's Exhibit (AE) A through J, without objection. I received the transcript (Tr.) on February 22, 2018.

Procedural Matters

Amended Adjudicative Guidelines

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about India. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.²

Withdrawal of SOR allegation

Department Counsel moved to withdraw SOR ¶ 1.b. I granted this motion without objection from the Applicant.³

Findings of Fact

Applicant, 70, has worked for federal contracting companies since 2009 and has had access to classified information since then. He has worked for his current employer since October 2017. He completed his most recent security application in June 2013, disclosing relatives and assets in India and eight trips to that country between 1979 and July 2011. The background investigation revealed that Applicant also inherited a home in India from his parents in 1997 valued at \$90,000. These familial relationships and assets are alleged under the foreign influence guideline. The investigation also developed information that Applicant's former employer cited him for two security violations in May and June of 2014, which are alleged under the handling protected information guideline.⁴

² The Government's administrative notice summary and attached documents are admitted to the record as HE II.

³ Tr. 19-20.

⁴ Tr. 10, 26; GE 1.

Applicant, a naturalized U.S. citizen since 2006, is originally from India, a parliamentary democracy that shares significant strategic interests with the United States, including counter-terrorism cooperation. The two countries have increased trade in goods and services, cooperate on nuclear policy, and engage in mutual efforts to address pollution and climate change. Although largely positive, the relationship between the United States and India is not without its concerns. India is an avid collector of U.S. proprietary information, and there have been several criminal cases of industrial espionage arising out of India, both from private sources and from the government itself. Terrorist activity occurs in India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups. India has some significant problems with human rights. India has good diplomatic relations with Iran and supports that country's efforts to develop nuclear energy for peaceful purposes. India's largest supplier of military systems and spare parts is Russia. Historically the relationship between the United States and India has been favorable and beneficial to both countries.⁵

Applicant immigrated to the United States in 1976 to attend graduate school. He married his wife, also a native of India, in 1981. She is also a naturalized U.S. citizen who has worked as a civilian employee of the Government for 21 years. The couple's two adult sons are U.S. citizens by birth. Applicant and his wife both have siblings in India. Applicant's only surviving sibling is a sister who is 75 years old. She has never worked outside the home. Applicant maintains contact with her twice per month by telephone. She is financially independent, but Applicant occasionally helps her with medical expenses. Applicant's other sister died in early 2018.⁶

Applicant's wife has four siblings, each of whom are citizens and residents of India. Applicant met his in-laws at his wedding in 1981. Since then, he has only seen one sister-in-law when she came to the United States to visit in the 1980s. Applicant does not maintain independent contact with his in-laws. They do not speak a common language. Applicant believes that his wife talks to her siblings frequently, but he cannot verify the amount of contact. Since 2003, Applicant and his wife have maintained separate households. Applicant's wife lives in the family home in State 1, and Applicant rents an apartment in State 2, where his job is located. When possible, he returns home twice per month.⁷

Applicant admits having a bank account in India worth approximately \$65,000, containing the proceeds of the 2011 sale of a vacant lot he purchased in 1974. Applicant reported the proceeds of the sale to the IRS, as required. He also owns a house that he inherited from his parents in the late 1990s valued at approximately \$90,000. In order to transfer the money in the bank account to a U.S.-based bank, Applicant would have to appear in-person at the bank in India. Concerned about the security ramifications of a trip to India, Applicant has chosen to keep the money in the

⁵ GE 1; HE II.

⁶ Tr. 24, 26, 34-35, 45, 47-51.

⁷ Tr. 36, 44, 47, 53-61, 74, 97-99.

account untouched. He has also chosen to retain the home he inherited because it requires significant improvements and repairs before it can be sold. Over the years, the home has remained empty except for his sisters' brief visits to their hometown. Since 2017, Applicant has allowed a family to live in a portion of the home rent-free.⁸

Applicant's India-based assets composes approximately 6% of his net worth. Applicant's U.S.-based assets, which include his paid-off home in State 1, his retirement savings, and other saving accounts, are valued at approximately \$2.7 million. In addition, Applicant and his wife continue to work full time, earning a joint income of approximately \$300,000 annually.⁹

Security Violations

The SOR also alleges that between May and June of 2014, Applicant committed two security violations. In May 2014, Applicant was working alone in a secured laboratory when he began to feel ill. Concerned about getting sick in the lab, Applicant exited the lab to rush to the restroom. On his way out of the lab, Applicant attempted to secure the lab as required. However, he managed to properly engage only one of the two required locks. Applicant was away from the lab for approximately 15 minutes. After leaving the restroom, he went outside for fresh air before returning to the lab. When he returned to the lab, security was there already there investigating a possible security violation. At the conclusion of the investigation, Applicant was issued a security violation, but was not ordered to perform any corrective action or attend training.¹⁰

In June 2014, Applicant was inside another secured space to speak with the laboratory manager about a potential security violation that occurred in the lab the day before. Applicant entered the secured area with his cellphone, forgetting the device was clipped to his belt. Applicant and the lab manager became aware of the phone when it beeped during their conversation. The lab manager immediately reported the possible violation to the security department and accused Applicant of lying about having the phone and trying to avoid another security violation in a matter of days. The security department confiscated Applicant's phone and examined it. Applicant was issued a security violation, but the security department noted that the device had not been used while Applicant had been inside the secured space. After this security violation, Applicant lost his opening and closing privileges for the lab. He left the job soon after, citing his treatment after the June 2014 incident.¹¹

In the eight years Applicant has had access to classified information, he has had no other security violations or infractions.¹²

⁸ Tr. 32-34, 37, 63-72, 99-102; AE G.

⁹ Tr. 26, 29, 73

¹⁰ Tr. 37-39; GE 3.

¹¹ Tr. 39-41, 81, 89-93; GE 2, GE 4.

¹² Tr. 76.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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 the 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.

Section 7 of 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

Foreign Influence

“[F]oreign contacts and interests, including . . . business, financial and property interests, are a national security concern if they result in a divided allegiance [or] . . . 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.” Applicant maintains a close relationship with his sister who is a resident and citizen of India. He also holds substantial business, financial, and property interests in India. Although the relationship between the United States and India is largely favorable, India has a documented history of collecting U.S. proprietary information. Also, Indian citizens have been involved in several criminal cases of industrial espionage against the United States. Based on these facts, Applicant’s connections to India raises a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion or personal conflict of interest.¹³

However, the evidence here mitigates these concerns. Although Applicant’s relationship with his sister cannot be considered casual, she does not hold a position or engage in activities that could place Applicant in a position of having to choose between his foreign relative and U.S. interests. Applicant’s relationships with his in-laws, however, can be considered casual and infrequent as he has only seen them once during his 37 years marriage and cannot communicate with them without his wife’s assistance as a translator.

The concerns raised by Applicant’s substantial financial interests in India are also mitigated. Applicant acquired the properties before he became a naturalized U.S. citizen and before he required national security eligibility. While the value of the assets are not insubstantial, these assets are not necessary to Applicant’s daily maintenance, nor does he require the Indian assets to comfortably provide financial assistance, when needed, to his sister. Given Applicant’s annual household income, his total U.S.-based assets, as well as his regular and candid disclosure of them to the U.S. Government, it is unlikely that his Indian assets could be effectively used to influence, manipulate, or pressure him.¹⁴

Handling Protected Information

Deliberate or negligent failure to comply with rules and regulations for handling protected information, which included classified and other sensitive information and raises doubt about an individuals’ trustworthiness, judgment, reliability, or willingness, and ability to safeguard such information, and is a serious security concern. Applicant’s two security violations in May and June 2014 are sufficient to support a finding that Applicant failed to comply with the rules for the protection of classified or sensitive

¹³ See AG ¶¶ 7(a), and (f).

¹⁴ AG ¶ 8(f).

information.¹⁵ However, these incidents are mitigated by the passage of time. Both incidents occurred four years ago. Both were inadvertent and did not result in the compromise of classified or sensitive information. Ultimately, the security violations do not cast doubt on Applicant's ongoing security worthiness.¹⁶

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have considered the whole-person factors in AG ¶ 2(d). Applicant's familial and financial ties to the United States outweigh his ties to India. He has not demonstrated divided loyalties between the two nations. Although Applicant received two security violations in a short time frame, they did not occur under circumstances that indicate an inability or unwillingness to abide by the rules established for handling or safeguarding of classified information.

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, Handling Protected Information	FOR APPLICANT
Subparagraphs 1.a, 1.c:	For Applicant
Subparagraph 1.b:	Withdrawn
Paragraph 2, Foreign Influence:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge

¹⁵ AG ¶ 34(g).

¹⁶ AG ¶ 35(a).