



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00855

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2018

Decision

CURRY, Marc E., Administrative Judge:

Applicant's exercise of dual Indian citizenship in 2015 does not generate any foreign influence or personal conduct security concerns. Given the length of time Applicant has lived in the United States, and the depth of his emotional and financial ties to the United States, I conclude that he would resolve any potential conflict of interest posed by Indian relatives living in India, in the U.S. interest. Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On April 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines B, foreign influence, and C, foreign preference, explaining why it was unable to find it clearly consistent with the interests of national security to grant or continue security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 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 for*

Determining Eligibility for Access to Classified Information (AG) effective within the DOD on September 1, 2006.

On September 6, 2016, Applicant answered the SOR allegations, admitting all of the allegations, except subparagraph 1.c, and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 17, 2018. On February 21, 2018, I scheduled a hearing for March 14, 2018, which was held, as planned. I received four Government exhibits (GE 1 – 4), ten exhibits from Applicant (AE A – AE J), and I considered Applicant's testimony. Also, at Department Counsel's request, I took administrative notice of the Government's exhibit list (HE I), Department Counsel's discovery letter, dated July 24, 2017 (HE II), and information encapsulated in nine documents concerning the security profile of India *vis a vis* the United States (HE III – HE XI). The transcript was received on March 20, 2018.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing 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 AG supersedes the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

Findings of Fact

Applicant is a 58-year-old married man with two adult children. He is an engineer who has been working for a defense contractor since 2009. (Tr. 34) He was born and raised in India, earning both an undergraduate and master's degree from Indian universities. (Tr. 34) In 1987, he immigrated to the United States on a student visa to pursue a doctorate. In 1991, he completed his doctoral studies in the field of thermodynamics. He has been a U.S. citizen since 1991. His wife is also a naturalized U.S. citizen originally from India.

Applicant's father died in 1979. Applicant's mother never remarried. As she aged, she needed more assistance. In 2002, Applicant and his wife decided to purchase an apartment for his mother. The purchase price of the apartment was \$200,000 USD. After they purchased the apartment, Applicant's wife decided to return to India with their two children to help his mother with her "day-to-day struggles." (Answer at 1)

Applicant's wife and children lived with his mother in India from 2003 to 2005. After his immediate family returned to the United States, his mother no longer wanted to live in the apartment. Subsequently, she relocated, and Applicant began leasing the apartment to tenants. Over the next ten years, Applicant earned approximately \$50,000 in rental income.

In 2015, Applicant sold the apartment in India. Because of tremendous economic growth in India over the past 15 years, the apartment's value had appreciated considerably. Applicant sold it for \$350,000 more than he paid for it. (Answer) By 2015,

Applicant had \$600,000 deposited in an Indian bank. This amount totaled the \$50,000 in rental receipts, together with the \$550,000 earned from the sale of the apartment. (Answer)

Since selling the apartment, Applicant withdrew \$200,000 from the Indian bank account and deposited it in a U.S. account. (Answer) In June 2015, Applicant purchased a vacation property in a resort area in India for \$110,000, using money withdrawn from the Indian bank account. (Tr. 36) To facilitate the purchase, he applied for, and was issued an overseas citizen of India (OCI) card. (Answer at 2; Tr. 47-48) An OCI card is granted to applicants who have acquired citizenship of a foreign country and who were of Indian origin. (AE J at 2)

Currently, Applicant's account in India has an approximately \$255,000 balance. Applicant's apartment in India and the money deposited in the Indian bank account constitute approximately 15 percent of his \$ 2.6 million net worth. (Tr. 11) The remainder of Applicant's property interests, including his 401k account, totaling \$481,000, are in the United States.

Applicant travels to India approximately once per year for holidays and special occasions. (Tr. 40) He uses his OCI card to forego having to apply for a visa before each trip. (Answer at 3; Tr. 48)

In 2015, Applicant's mother passed away. His remaining relatives in India include his brother and three sisters (S1, S2, S3). His brother works for an information technology firm. He talks to him approximately once per month. (Tr. 38) They merely exchange pleasantries; they do not "talk shop." (Tr. 38) S1 is a retired bank clerk. They talk every three to four months. (Tr. 39) S2 is a homemaker. They talk every six months. (Tr. 39) S3 is a homemaker. They talk every two to three months. (Tr. 40) Generally, Applicant's conversations with his siblings occur during holidays and special occasions. (Tr. 40)

Applicant's parents-in-law are citizens and residents of India. Applicant talks to them once every three to four months. (Tr. 40) His father-in-law is retired and sometimes helps out at a gas station that Applicant's brother-in-law operates. (Tr. 40) His father-in-law has a limited education. Applicant's mother-in-law is a homemaker.

India is a multiparty, federal, parliamentary democracy with a bicameral parliament. The country is comprised of 29 states and seven union territories. These regions have a high degree of autonomy.

Over the years, several companies and individuals have either been convicted or indicted for violating the law regarding exporting sensitive components to India, or exporting technology to India without acquiring the appropriate licenses. (HE III at 2) For example, in April 2016, a U.S. defense contractor was convicted and sentenced to 57 months in prison for conspiring to send sensitive military technical data to India without obtaining the necessary licenses. (HE V at 6) In 2011, an Indian citizen with a U.S. work visa was arrested and charged with stealing proprietary information from his employer and providing it to a relative in India who was starting up a competing company. Ultimately, this

charge, along with 24 other charges were dropped, in exchange for the defendant pleading guilty to one count of unlawful access to a protected computer. The court sentenced him to time served, and fined him \$3,435. (HE V at 5) In 2008, an Indian national and an Indian corporation were indicted on five counts of illegally supplying the government of India with controlled goods and technology, including applications related to missile delivery systems, without required licenses.

India has experienced several terrorist attacks over the years, including operations launched by Maoist insurgents within India, and transnational groups from Pakistan. (HE XI at 1) India is strongly committed to enhancing its counterterrorism efforts, working closely with the United States to bolster infrastructure security, critical incident management, community-oriented policy, cybersecurity, and mega-city policing capabilities. (HE XI at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to 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. 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 to classified information 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is set for in AG ¶ 6, as follows:

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, consideration 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.

Although India, like many countries, has been victimized by terrorism, there is no record evidence that it supports terrorists, or endorses the use of terrorism abroad to undermine its adversaries. Moreover, India is firmly committed to fighting terrorism, providing counterterrorism training to all levels of government, and cooperating robustly with the United States to build, refine, and improve its counterterrorism efforts. Consequently, Applicant's relatives do not generate any heightened risk of coercion based on their Indian residency.

Although India is a U.S. ally, friendly countries may conduct espionage against U.S. interests as readily as hostile ones. The information about India's geopolitical profile *vis a vis* the United States, contained in the administrative notice exhibits has no information about the Indian government intimidating or otherwise persuading Indian nationals to divulge classified or sensitive information through their family members or friends living in India. However, there is evidence of U.S. defense contractors and Indian nationals, living in the United States, circumventing export regulations to sell military-related technology to Indian companies or the Indian government. Under these circumstances, 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," applies.

Applicant's contact with his siblings living in India is limited to the casual exchange of pleasantries a few times per year, primarily on holidays and special occasions. Under these circumstances, AG ¶ 8(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," applies.

Although Applicant's contact with his parents-in law is similarly infrequent, there is a presumption that contact with one's in-laws is not casual. Nevertheless, given the length of time Applicant has lived in the United States, raising his children, cultivating a successful career, saving nearly a half-million dollars for retirement through his 401k account, and integrating himself into the community, I conclude that "there is no conflict of interest, because Applicant "has such deep and longstanding relationships and loyalties in the United States, that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." (AG ¶ 8(b)).

Applicant's property interests in India, including a vacation home and a bank account with a \$255,000 balance, trigger the application of AG ¶ 7(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." Although Applicant's property interest in India is substantial, it is small in comparison to his entire net worth. Under these circumstances, "the value . . . of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure," him. (AG ¶ 20(f)).

In conclusion, Applicant's casual and infrequent contact with his siblings mitigates any potential security risk posed by either their Indian citizenship or residency, and Applicant's ties to the United States are longstanding and strong enough for me to conclude that he would resolve any conflict of interest generated by his relationship with his parents in-law in the U.S. interest. Applicant has mitigated the Guideline B security concern.

Guideline C, Personal Conduct

Under this guideline, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States." (AG ¶ 9) When Applicant applied for and was issued an OIC card to facilitate the purchase of a property in India, and to forego visa requirements for subsequent trips, he was taking advantage of a privilege afforded to former Indian citizens who are expatriates. The exercise of such a right or privilege of foreign citizenship absent any objective showing of a conflict or attempt at concealment, by itself, does not indicate a foreign preference security concern. Under these circumstances, there are no personal conduct security concerns.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹ I evaluated the whole-person factors in my analysis of the

¹ The factors under AG ¶ 2(d) are as follows:

disqualifying and mitigating conditions, particularly, the application of the foreign influence mitigating condition set forth in AG ¶ 8(b).

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.g:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge

(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.