



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 17-01395

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns about the presence of his family members and friends in India, as well as by his financial interests there. He also did not mitigate the foreign preference security concerns about his decision in 2013 to move his family back to India, where they still reside. Applicant's request for a security clearance is denied.

Statement of the Case

On September 23, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his position as the head of a small information technology firm seeking to do business through contracts with the federal government. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not

determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

On May 16, 2017, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guidelines B (Foreign Influence) and C (Foreign Preference).² Applicant timely responded to the SOR and requested a decision without a hearing. On August 16, 2017, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on November 1, 2017, and was notified that he had 30 days to file a response to the FORM. He did not submit any additional information, and the record closed on October 1, 2017. The case was assigned to me on January 10, 2018.

Findings of Fact

Under Guideline B, the SOR (FORM, Item 1) alleged that Applicant's parents (SOR 1.a), children (SOR 1.b), and sister (SOR 1.c) are citizens of India and reside there. The SOR also alleged that Applicant's brother-in-law is a citizen of India, living and working there as a city police commissioner (SOR 1.d). It was further alleged that Applicant's wife's parents (SOR 1.e), and several close friends and associates (SOR 1.f), are citizens of India and reside in India.

Also under Guideline B, the SOR alleged that Applicant has \$10,000 in a bank account in India (SOR 1.g); that his wife owns a home there worth \$385,000 (SOR 1.h); that Applicant has a financial interest in his parents' home worth about \$200,000 (SOR 1.i); that Applicant is employed in India by his father's India-based business earning about \$5,715 monthly (SOR 1.j); and that Applicant has a \$300,000 investment in a financial opportunity in Uganda (SOR 1.k).

Under Guideline C, the SOR alleged that Applicant and his wife have lived in India since June 2013 (SOR 2.a). In response to the SOR, Applicant admitted all of the allegations except for SOR 1.e. He denied that allegation because, as he stated in his e-QIP and during a personal subject interview (PSI) on May 2, 2016, his mother-in-law now lives in the United States, and his father-in-law died in 2001. SOR 1.e is resolved for Applicant. (FORM, Items 2 – 4) In addition to the foregoing, I make the following findings of fact.

Applicant is 48 years old, and he was born and raised in India. In 1991, he received a bachelor's degree in India. The following year he immigrated to the United States, where

¹ Required by Executive Order 10865, as amended. See *a/so* Directive, Section E3.1.1.

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case. Item 6 is an administrative notice request supported by ten documents (Enclosures I - X)

he received a master's degree from an American college in 1994. Applicant became a naturalized U.S. citizen in 2008. He and his wife, also born and raised in India, have been married since August 1996. They were married in India, but lived in the United States, where their son was born in 2005, until June 2013. At that time, they moved back to India to care for their elderly parents. They live in India in the house discussed in SOR 1.h. The house is solely in Applicant's wife's name, but it is their principal residence. Applicant and his wife still own the house in which they lived in the United States. It is worth about \$265,000. Applicant and his family intend to stay in India until about 2022, when their son is ready to attend college in the United States. Applicant and his wife maintain the bank account referenced in SOR 1.g because India is their full-time residence and they need to conduct most of their personal banking through such an account. (FORM, Items 2 – 4).

In his e-QIP, Applicant listed his parent's house in India as a foreign asset. He stated it is worth about \$200,000 and listed his late father and an uncle as the co-owners. Applicant further stated that he expects to receive the house as an inheritance or gift in June 2040. Applicant has no current financial interest in the house where his mother lives. (FORM, Items 3 and 4)

Since May 2000, Applicant has worked for his father's business. Until 2015, he earned his income working for a version of his father's company that does business in the United States. In his e-QIP, he listed himself as self-employed and as the company president. Starting in April 2015, Applicant has only earned income (about \$70,000 annually) in India working in a similar capacity for a version of his father's company doing business only in India. As of the date of his PSI, Applicant has not reported U.S. income on his income tax returns since the 2015 tax year. (FORM, Items 2 – 4)

As to the investment in Uganda, Applicant entered into that venture in late 2015. He did so after being introduced to one of the associates listed in his e-QIP. That person is an Indian citizen and lives in India full time. Applicant has frequent contact with that person, as well as the other Indian nationals he listed in his e-QIP. In response to SOR 1.i, Applicant acknowledged his investment but stated that his U.S. investments "are much higher." Applicant did not provide any information about his personal holdings in the United States. (FORM, Items 2 – 4)

In 2001, Applicant and another person started a small information technology company in the United States. Their efforts did not amount to anything and the company was largely dormant until 2012. At that time, he and his friend revived the company and established a small information technology presence in the United States. As of Applicant's PSI in 2016, that company had a small, non-government contract footprint, but had begun exploring possible classified contract opportunities with the federal government. In 2015, the company sponsored Applicant's submission of his e-QIP to obtain the clearance needed for him to market its services and bid on proposals for such work. (FORM, Item 4)

Based on the information⁴ presented in support of the Government's administrative notice request, I make the following findings of fact:

India and the U.S. have had close relations ever since India obtained its independence from Great Britain in 1947. The two governments continue to work closely in pursuit of mutual interests in such issues as international management of nuclear technology, preventing the proliferation of nuclear weapons, and the global war on terror. Because India is important to strategic U.S. interests in the region, the two countries have also engaged in several joint military exercises to ensure stability in southern and southwest Asia. The Indian government buys most of its nuclear technology from the U.S., and it has an excellent record when it comes to protecting its nuclear arsenal.

Since the end of the Cold War, India has been an advocate of issues important to non-aligned nations, and is a member of the South Asian Association for Regional Cooperation (SAARC). Not only does India enjoy close relations with the U.S., but it is working to strengthen its ties and advance its mutual interests with France, Israel, China, Iran, the European Union, Japan, and the Association of Southeast Asian Nations (ASEAN).

India's human rights record is uneven. Throughout its history, India's caste system, multi-cultural and multi-ethnic population, and the vestiges of colonial domination still challenge India's ability to govern certain parts of the country. As a result of sometimes violent separatist movements, provincial law enforcement authorities and military militias have used excessive force to maintain order and defeat domestic terrorism. Although terrorism and separatist activities are generally done in furtherance of internal issues, and are most violent in limited and remote geographic regions, the developing presence of international terrorist organizations is a growing concern. Despite these problems, India is still an open society in which the rule of law is prominent.

India, the world's most populous democracy, uses a federal form of government, similar to the United States, but with more authority vested in the central government. It has a bicameral legislature modeled after Britain's parliament, and its members are selected through open elections involving several political parties. India also has an active market-oriented economy, and conducts most of its international trade with the U.S. India is included, along with other countries with whom the U.S. has good relations, on the U.S. State Department's list of the most active collectors of industrial information and technology.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative

⁴ In addition to the information contained in FORM Item 6 and its supporting documents, I have, *sua sponte*, consulted other sources, such as the *CIA Factbook* web pages regarding India.

⁵ Directive, 6.3.

guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

Analysis

Foreign Influence

The security concern about possible foreign influence is articulated at AG ¶ 6, as follows:

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

More specifically, the record requires application of the following disqualifying conditions under AG ¶ 7:

- (a) contact 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 information or technology and the individual's desire to help a foreign person, group, or country by providing that information; 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 a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant has extensive personal and financial ties to India. Because India is known to aggressively pursue economic and technology information from the United States, and owing to the presence of domestic terrorism there, those relationships reasonably raise security concerns about foreign influence. Applicant and his family reside full time in India and only plan to return when his now-13-year-old son is ready to attend college in the United States. All of his contacts, family and professional, are Indian citizens who reside in India. Applicant and his wife live in India because of personal concerns about their elderly parents; but Applicant also has established himself financially in India. He works full time for the version of his father's company that does business only in India, and he has not earned income from work in the United States since April 2015. That apparently includes any financial interest in the company serving as his sponsor for an industrial security clearance.

Applicant still owns a home in the United States, but its value is less than the home in which he and his wife live in India, and it is valued at less than Applicant's investment in Uganda. As to Applicant's family residence in India, the fact that the house is owned solely by Applicant's wife does not mitigate its security significance for Applicant. Just as there is a rebuttable presumption that her foreign family ties also are important to

Applicant, he also is presumed to be as concerned as his wife about her foreign financial interest – the family residence – in India. Applicant also does all of his personal banking in India. As to Applicant's interest in his parent's home, I have not included it in my analysis because it constitutes a future interest that Applicant may or may not someday possess. SOR 1.i is resolved for Applicant.

I also have considered the following AG ¶ 8 mitigating conditions:

(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; 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.

It is reasonable to conclude that there is a heightened risk of pressure by foreign entities when a person has relatives or financial interests abroad. Applicant had the opportunity and the obligation to produce information that would show why such a risk might be mitigated. He did not do so. Specifically, Applicant did not establish that his family ties and other associations in India would not conflict with his interest in having access to classified information as part of doing business with the federal government through a company that has been largely dormant over the past 17 years. The vast majority of Applicant's personal and financial interests are in India. In response to the SOR, he claimed his investments in the United States were worth more than his \$300,000 Ugandan investment; however, he did not provide any information about his interests and ties in the United States to support that claim. Nor did he show how his ties in the United States would make it likely he would resolve any conflicts of interest in favor of the United States. As to his commitment to U.S. interests and loyalties, his residence in India since 2013 and his stated plans for full-time residence there until at least 2022 undermines confidence that his interests would not lie with India over those of the United States. I conclude the security concerns raised by the Government's information are not mitigated.

Foreign Preference

Applicant's full-time residence in India since 2013 reasonably raised a security concern about possible foreign preference. That security concern is stated at AG ¶ 9:

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. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The SOR did not allege, and the Government did not establish, any facts or circumstances addressed specifically by any of the AG ¶ 10 disqualifying conditions. By the same token, Applicant did not establish any basis for applying one or more of the AG ¶ 11 mitigating conditions. Nonetheless, the absence of a particular disqualifying or mitigating condition does not mean that a concern about Applicant's circumstances does not exist or that Applicant has no obligation to respond to that concern. I conclude that Applicant's decision to live in India full time over the course of a decade establishes the basis for the general security concern here. Further, that security concern has not been satisfactorily addressed through Applicant's response. Accordingly, I conclude the security concern under this guideline is not mitigated.

I have evaluated this record applied the appropriate adjudicative factors under Guidelines B and C. I also have considered the whole-person factors listed in AG ¶ 2(d). The record evidence as a whole does not support any of the whole-person factors. Applicant failed to present sufficient information of mitigation in response to the Government's case. As a result, the doubts raised by the Government's information remain unresolved. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraphs 1.f – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1.k:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge