



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



In the matter of:)
)
) ISCR Case: 17-01672
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

07/09/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the concerns related to foreign influence raised by his relatives and friend in India. His request for a security clearance is denied.

Statement of Case

On February 9, 2015, Applicant submitted a security clearance application (SCA). June 24, 2017, in accordance with the Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raised security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on July 11, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 21, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on October 24, 2017, scheduling the hearing for January 16, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection, and Hearing Exhibit (HE) 1 for Administrative Notice. Applicant testified on his own behalf and presented Applicant Exhibit (AE) A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 24, 2018.

Procedural Rulings

At the hearing, the Government Counsel requested I take administrative notice of certain facts relating to the Republic of India (India). Department Counsel provided a nine-page summary of the facts, supported by ten Government documents, identified as HE 1, collectively. The documents provide elaboration and context for the summary. Applicant did not object to the Government's request. Hence, I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute and are set out in the Findings of Fact.

Findings of Fact

Applicant is 62 years old. He was born in India. He immigrated to the United States at the age of 24, and became a naturalized U.S. citizen in November 1994. He has held a security clearance since 2007, without incident. He is married to a naturalized U.S. citizen. They have two natural-born U.S. citizen sons. (GE 1; GE 2; Tr. 17, 20.)

Applicant's family were refugees to India. He lived in the northeastern part of India, which was isolated from the rest of India. He did not develop any sense of loyalty to India. (Tr. 18.) He immigrated to the United States to pursue higher education in 1979. He earned a master's degree in 1982 and a doctorate in 1986, both from a U.S. university. He joined his current employer in 1992. (GE 1.)

Applicant's cousin is a citizen of India and is currently employed as an ambassador from India to a foreign nation. Applicant would see her monthly at family events as a youth. Applicant indicated he has infrequent contact with his cousin and does not speak to her on the phone. He last saw her in person in June 2016, while she was working in the United States. Prior to that, they met in 2013. Applicant does not discuss work with his cousin. (Tr. 15, 23-24.)

Applicant's mother, sister, and brother-in-law are citizens and residents in India. His mother is 93 years old. Applicant calls her weekly and visits her in India annually. He calls his sister twice a year. He has given power of attorney to his sister so that when their mother passes away, his sister can dispose of their mother's assets. He does not retain any property interest in his mother's estate. (GE 1; GE 2; Tr. 15.)

Applicant's friend is a retired employee of the Indian government. Applicant contacts him twice a year on holidays. Applicant does not discuss work with his friend. (Tr. 15.)

Applicant owns a home in the United States. He has approximately \$600,000 in equity in that home. He also has retirement savings accounts in the United States. He estimated his net worth is approximately \$780,000. He has no property, investments, or accounts in India. (Tr. 21-22.)

Applicant's manager indicated Applicant has been trained in rules and regulations regarding international restrictions on exporting the technology with which he works. Applicant has been faithful in his duties to protect that proprietary information. Applicant is known to be a "very conscientious, honest, trustworthy person." (AE A.)

India

India is the world's largest democracy and is the world's second most populous country. India is a multiparty, federal, parliamentary democracy with a bicameral parliament. (HE I.)

India has a history of being involved in criminal espionage and is an active collector of U.S. economic and proprietary information. The most heavily targeted sectors include aeronautics, information systems, lasers and optics, sensors, and marine systems. There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. (HE I.)

A March 2017 Human Rights Report on India reflects that the most significant human rights problems in India involve police and security forces who engage in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeates the government and security forces, creating an atmosphere in which human rights violations go unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In addition, a number of terrorist groups operate in regions of India, which makes travel to these regions dangerous. (HE I.)

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 are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's mother, sister, brother-in-law, and friend are citizens and residents of India. His cousin, also a citizen of India, is an ambassador representing India. India is the world's largest democracy. But it also continues to have human rights issues, has been victimized by terrorist attacks, and has a history of seeking restricted dual-use technology, which has been illegally exported to India from the United States. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹ It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b), have been raised by the evidence.

¹ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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; and

(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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that Applicant and his family members are vulnerable to coercion. The risk of coercion, pressure, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon that government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. In this case, there is evidence that India illegally targets U.S. technology; that his cousin is a ranking member of the Indian Government; and that there is terrorist activity in the country, which raises a security concern about Applicant's relationship with his mother, sister, brother-in-law, cousin, and friend. Hence, AG ¶ 8(a) has limited application.

Applicant produced some evidence to establish AG ¶ 8(b). He has lived in the United States since 1979. He became a naturalized citizen in 1994. His wife and children are U.S. citizens. All of his assets are in the U.S. He has relinquished all claims on his mother's estate in India. Based on those connections to the United States, there is some indication that he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) does not apply to the security concerns raised as a result of Applicant's contacts with his mother, sister, brother-in-law, and friend in India because those contacts are frequent and not casual. His communications have been consistent over

and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

the years, including multiple trips to India to visit family there. His contact with his cousin is infrequent, their last contact being two-years ago, in 2016. However, due to her role as an ambassador and India's interest in technologies that Applicant works on, there is insufficient evidence to hold that there is little likelihood that his contact with her could create a risk for foreign influence or exploitation.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

Applicant is a 62-year-old man, who was born in India and has lived in the United States for about 39 years. He has been a naturalized U.S. citizen since 1994. His spouse is a naturalized U.S. citizen, and his children are natural-born U.S. citizens. He has significant assets in the United States. He is highly regarded at work and has held a security clearance since 2007 without incident. Those are facts that weigh in favor of granting Applicant a security clearance. However, Applicant's ties to India outweigh those factors. Over the past 20 years, Applicant has maintained strong connections to India through his family living there. He has communicated regularly with his mother over the years and visited her in India. While his ongoing contacts with family members and his friend in India demonstrate devotion to and affection for his family, those actions raise security concerns and potential conflicts of interest that are not easily mitigated. Further, his contacts with his cousin, while infrequent, raise security concerns due to the high-profile nature of her position within the Indian government. Applicant failed to meet his burden to present sufficient evidence that it is unlikely he would 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence

leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge