



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



In the matter of:

ISCR Case No. 17-02285

Applicant for Security Clearance

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel

For Applicant: *Pro se*

07/10/2018

Decision

Benson, Pamela C., Administrative Judge:

Applicant mitigated security concerns arising under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

On April 18, 2016, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 19, 2017, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR on August 16, 2017, and requested a decision based on the written record in lieu of hearing. On November 28, 2017, Department Counsel submitted the Government's file of relevant material (FORM). The Government's evidence is identified as Items 1 through 4. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM, which he received on December 13, 2017. Applicant did not submit an objection to Government Exhibits (Items) 1 through 4, nor did he provide a supplemental response to the FORM. GE Items 1 through 4 are admitted into the record. The case was assigned to me on May 2, 2018.

Findings of Fact

Applicant admitted the four allegations in Paragraph 1 of the SOR. All the allegations alleged familial connections to India, Applicant's country of birth. (Items 1-3)

Applicant is 45 years old and works for a defense contractor. He emigrated from India to the United States in September 1995 when he was 22 years old. He became a naturalized U.S. citizen in 2008. He has had a U.S. passport since 2008. His Indian passport was cancelled after he became a U.S. citizen. (Items 3-4)

Applicant's spouse was born in India, but she is also a naturalized U.S. citizen. They have been married since 2001. His two children, ages 11 and 7, were born in the United States. His immediate family members reside in the United States. (Items 3-4)

Applicant's two brothers, one sister, mother-in-law, three sisters-in-law and three brothers-in-law all live in India and are citizens of that country. Applicant's eldest brother is self-employed. His younger brother works for a technology company in India. Applicant's sister is a homemaker and his mother-in-law is a retired school librarian. Two of Applicant's sisters-in-law are homemakers, and the third sister-in-law is employed as an accountant. Applicant's three brothers-in-law are self-employed, a research analyst, and an accountant. (Items 3-4)

Applicant's listed family members do not work for, or have connections with, the Indian government. Applicant provides financial support to his siblings in the amount of approximately \$500-\$1,000 quarterly due to their poor financial situation. The money is used to help their children attend school. He maintains weekly-to-monthly telephonic contact with his other relatives listed in the SOR. He travelled to India in 2012 for three weeks and in 2013 for ten days. Applicant's parents are deceased. His father-in-law is also deceased. (Items 3-4)

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request in the brief that I take administrative notice of certain facts relating to India. The request and the attached documents were admitted into evidence as Item 5. The facts administratively noticed are set forth below.

Administrative Notice

India is the most populous democracy in the world. There have been incidents in the past when parties in the United States attempted to illegally export military or dual-use technologies to India, such as microwave amplifiers and missile components. There have been numerous and recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving the government of India, private companies, and individuals. Finally there are concerns with widespread human-rights problems.

India and Pakistan have been locked in a tense rivalry since the partition of the subcontinent after the end of British rule in 1947. These two countries have engaged in three wars since 1947 over Kashmir and Jammu, both Indian states. The U.S. State Department strongly recommends avoiding travel in these areas by U.S. citizens.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. In 2015, terrorists attacked a border security force killing two security personnel. Attacks in 2012 and 2013 show India remains a target for these groups.

A 2017 U.S. State Department report detailed significant human rights problems in India with police and security force abuses, corruption in all levels of the government, and various types of violence. Discrimination and violence against women remain a serious problem.

In 2015 the United States and India signed a “Declaration of Friendship” because India is growing as a trade partner with the U.S. The two countries are to cooperate on energy, defense, and homeland security. (Item 5)

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, these guidelines are applied in conjunction with the

factors listed in the adjudicative process (AG ¶ 2(a)). 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 10865 provides that 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

AG ¶ 7 explains the security concern about "foreign contacts and interests" stating:

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.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “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.” AG ¶ 7(a). In addition, AG ¶ 7(b) provides that “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individuals’ 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 has both contact with and connections to family members in India.

Applicant has contact with his sister, brothers, and mother-in-law on a frequent basis. His contact with his three brothers-in-law and three sisters-in-law is not as frequent, however, there is family contact. Therefore, AG ¶ 7(a) applies.

Applicant’s familial connections to his siblings and to his wife’s family in India create the potential for a conflict of interest between Applicant’s obligation to protect sensitive information or technology and his possible desire to assist his Indian relatives by providing that information. AG ¶ (b) applies.

AG ¶ 8 lists two potential conditions that could mitigate foreign influence security concerns 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; and

(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.

Applicant has lived in the United States since immigrating in 1995. He became a U.S. citizen in 2008. He owns a home in the United States. His contact with his siblings and in-laws is ongoing, but those contacts do not overcome his loyalty to the United States. Applicant's family members are not involved in governmental work in India. They have positions in India that make it unlikely that he would be placed in the position of having to choose between his relatives' interests and those of the United States. Applicant's connections to the United States after 23 years are stronger than his familial ties to India. Applicant can be expected to resolve any conflict of interest in favor of the United States based on his 20-year work history. AG ¶¶ 8(a) and (b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An 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.

Under 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 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. Applicant's foreign contacts resulted from his birth in India. His children were born here, his family resides here, and he voluntarily became a U.S. citizen in 2008. There is no evidence that he has ever taken any action that could cause potential harm to the United States. There is no derogatory information about him in the record.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

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: FOR APPLICANT

Subparagraphs 1.a-d: 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 a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge