



**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. 17-04140

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by the presence of his family members in India, and by his financial and property interests there. Applicant's request for a security clearance is granted.

Statement of the Case

On May 7, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew a security clearance required for his job with a defense contractor. 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

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

On December 29, 2017, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence).² Applicant timely responded to the SOR and requested a decision without a hearing. On April 6, 2018, Department Counsel for the Defense Office of Hearings and Appeals compiled a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on May 10, 2018, and was notified that he had 30 days to file a response to the FORM. The record closed on June 9, 2018, after Applicant did not submit any response to the FORM, or object to any of the information presented therein. I received this case for decision on July 27, 2018.

Findings of Fact

The Government alleged that Applicant's father (SOR 1.a), mother (SOR 1.b), brother (SOR 1.c), father-in-law (SOR 1.d), mother-in-law (SOR 1.e), and sister-in-law (SOR 1.f) are citizens and residents of India. As to his father and father-in-law, they are also alleged to be retired employees of the Indian government at the state and federal levels, respectively. It was further alleged that Applicant owns a house in India worth about \$15,000 (SOR 1.g); that he owns stock in a company based in India (SOR 1.h); and that he and his brother own a house together (SOR 1.i). Applicant admitted these allegations, with explanations. He also provided two character references from a long-time friend and associate, and from his supervisor for the past four years. (FORM, Item 1)

In addition to his admissions, I make the following findings of fact. Applicant is 46 years old. He was born and raised in India, where he earned a bachelor's degree and a master's degree. He immigrated to the United States in 1998, at age 25, on an H1B (foreign worker) visa. He was granted permanent resident alien (PRA) status in August 2003, and earned U.S. citizenship in February 2009. Applicant earned another master's degree in the United States in March 2007. (FORM, Items 2 and 3)

Applicant and his wife, also a naturalized U.S. citizen originally from India, have been married since February 2000. They have two children, ages 13 and 17, who were born in the United States. Since June 2014, Applicant has rented an apartment in State A where he works, while his family lives in State B in a home Applicant bought in November 2005. Applicant commutes between State A and State B on weekends. He previously owned another home in State B between 2001 and 2005. (FORM, Items 2 and 3)

Applicant has lived and worked exclusively in the United States since 1998. He has worked for federal contractors in the United States since at least October 1999. In

² See Directive, Enclosure 2.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included four documents (Items 1 - 4) proffered in support of the Government's case. Item 4 is an administrative notice request supported by nine documents (Enclosures I - IX)

2014, he received a security clearance for his work in support of the U.S. Department of State. (FORM, Items 2 and 3)

In 1995, the company in India where Applicant was working went public and Applicant availed himself of the opportunity to buy stock in the company. He has never actively managed the stock, which is held by a management company in India. He does not know its value, and he does not rely on the stock or its performance for income or other financial gain. (FORM, Items 1 and 3)

Applicant's father is a retired employee of a state utility board in India. The record does not indicate what, if any, connection he still has to that state entity. Applicant's mother has never worked outside the home. Both of Applicant's parents have PRA status in the United States, but spend more time in India than the U.S. for better access to medical care. They live in a house purchased for them by Applicant and his brother, who also lives in India. The house cost about \$2,000 when it was purchased in 2000. (FORM, Items 1 – 3)

Applicant's father-in-law is a retired employee of an Indian defense financial agency. The record does not indicate what, if any, connection he still has to that state entity. Applicant's mother-in-law has never worked outside the home. Applicant's wife's parents live in a home in India owned by Applicant and his wife. It is worth about \$15,000. Applicant and his wife hope to bring her parents to the United States to obtain PRA status. If and when that happens, they will sell the house. Neither of Applicant's properties in India is used to produce income or other investment value. (FORM, Items 1 – 3)

Applicant also has a sister-in-law who is a citizen of India and resides there. She is married and does not work outside the home. As with his other relatives in India, Applicant speaks with her about once a month. Applicant's parents are aware that his work involves a security clearance; however, he never speaks with them about work. All of Applicant's communications with his brother, his parents, and his in-laws is of a personal nature. (FORM, Items 1 – 3)

Applicant avers that the great majority of his financial interests on which he currently, or will someday, rely are in the United States. He invests in a 401k retirement account through work and does not rely on any of his foreign holdings. Applicant has an excellent reputation for his professionalism and personal integrity. Associates who have known him and worked with him between four and 18 years endorse his suitability for a security clearance based on their first-hand experience with Applicant in the workplace and the community. (FORM, Item 1)

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

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

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 have challenged 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. Chief among these groups is Al-Qaida in the Indian Subcontinent (AQIS), designated in 2016 by the U.S. State department as foreign terrorist organization (FTO). 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 guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

⁵ Directive, 6.3.

(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

Applicant's parents, brother, and in-laws are citizens and residents of India. By definition, these are persons to whom Applicant is closely bound by affection. Because India is known to aggressively pursue economic and technology information from the United States, and owing to the presence of domestic and international terrorism there,

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).

these relationships reasonably raise security concerns about foreign influence. That concern is articulated at 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, 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, information about Applicant's relatives in India requires application of the disqualifying condition at 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.

By contrast, the record also requires application of 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 U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

None of Applicant's family are associated with the government of India. Even assuming that his father and father-in-law draw government pensions in retirement, those interests amount to tenuous connections, at best. The record does not contain information about what Applicant's brother does for a living, and his mother, mother-in-law, and sister-in-law are all housewives, not working outside the home. Applicant avers his conversations with his Indian relatives are of a strictly personal nature. At most, his father's and his father-in-law's pension benefits represent a government connection; however, those benefits likely do not involve any active participation or interaction with

any state or federal government entity. As such, they have little, if any, security significance. AG ¶ 8(a) applies.

Applicant has lived and worked exclusively in the United States for the past 20 years. His immediate family is rooted here, as are his other personal, financial, and professional interests. His property and financial interests, by comparison, are minimal. He and his wife are likely to dispose of at least one of the properties if and when her parents immigrate to the United States. Applicant's parents already have PRA status and only live in India to the extent they need easier and cheaper access to medical care.

It is reasonable to conclude that there is a heightened risk of pressure by foreign entities when a person has relatives living abroad. However, in this case that risk is greatly attenuated by the open nature of India's society, and by the long-standing close ties between the United States and India. Further, Applicant has firmly established a life in this country. His wife is a naturalized U.S. citizen, and his children are U.S. citizens by birth. Applicant's entire personal and professional life is in the United States. The record as a whole supports a reasonable conclusion that Applicant can be relied on to resolve any conflicting interests consistent with the expectations associated with his access to classified information.

As to Applicant's interests in two homes, as well as his stock ownership, in India, I have considered 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.

The record does not support this disqualifying condition. There is insufficient information about the value of the homes or the stocks from which to conclude that these interests are "substantial." Applicant's stock ownership is passive, and the homes are modest personal properties worth far less than Applicant likely earns in a year in the United States. SOR 1.g, 1.h, and 1.i are resolved for Applicant. I conclude the security concerns raised by the Government's information have been mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline B, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). A fair and commonsense assessment of all available information bearing on Applicant's suitability for access to classified information supports a conclusion in favor of 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: FOR APPLICANT

Subparagraphs 1.a - 1.f: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge