



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



In the matter of:)	
)	
)	ISCR Case No. 17-04247
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted 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, effective on June 8, 2017 (AG).

Applicant answered the SOR on May 18, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on June 28, 2018. The evidence

included in the FORM is identified as Items 3-4 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on July 7, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections and did not submit any evidence. Items 3-4 are admitted into evidence without objection. The case was assigned to me on October 31, 2018.

Procedural Ruling

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Item 5. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the SOR allegations, with explanations. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

The SOR alleged that Applicant's parents-in-law and three sisters are citizens and residents of India; that he maintains close and continuing contacts with friends who are residents and citizens of India; that his spouse owns property in India valued at approximately \$30,000; and that he has stakes in two Indian-based businesses, one for \$6,000 and the other for \$1,000. (SOR ¶¶ 1.a - 1.f).

Applicant is 57 years old. He was born in Bahrain in 1961. The record is silent as to when he moved to India. He relocated to the United States in 1998. He became a naturalized U.S. citizen in 2009. Applicant possesses a Ph.D. and two master's degrees. He currently is self-employed and has been a university professor since August 2016. He has been married since 1989 and his wife is a naturalized U.S. citizen. He has two adult children who are U.S. citizens.¹

Foreign Influence

Applicant has weekly internet telephone contact with his three sisters who are residents and citizens of India. All three sisters are aware of the nature of his work on defense contracts. The record is silent as to his sisters' nature of employment and as to what relationship, if any, they have with the Indian government.²

¹ Items 3-4.

² Items 3-4.

Applicant's parents-in-law are residents and citizen of India. The record is silent concerning the nature of their employment and any relationship they may have with the Indian Government. His father-in-law is not aware of the nature of Applicant's work, but his mother-in-law is aware. Applicant's wife talks to her parents weekly and he talks with them once every two months.³

Applicant has five friends that he went to school with in India, were his professors when he attended school in India, or were students he taught there. He still maintains contact with these friends and also his uncle. All six are citizens of India. The frequency of his contact is from one to three times a year through an internet messenger service. None of these contacts are affiliated with the Indian government.⁴

Applicant's wife purchased two plots of agricultural property in India for investment purposes. She paid \$3,000 for the land.⁵ The land has not been improved and does not produce income. They have never visited this property. Applicant claims this property is insignificant to his overall financial wellbeing compared to his other holdings.⁶

Applicant invested in two Indian-based businesses started by a former student. He invested \$4,000 in one and \$1,000 in the other. Applicant is not the majority owner of either company and he does not count on the investment for his financial future.⁷

India

India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion.

The Indian government generally respects the rights of its citizens, but serious problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearance, torture, and rape. The lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. A number of violent attacks were committed in recent years by separatist and terrorist groups. In November 2008, terrorists coordinated an attack at a hotel in Mumbai, frequented by westerners.

³ Items 2-4.

⁴ Item 4.

⁵ The record evidence supports the property value of \$3,000 as opposed to the amount of \$30,000 as alleged in the SOR.

⁶ Item 4.

⁷ Item 4.

The United States recognizes India as key to strategic interests and has sought to strengthen its relationship with it. The two countries are the world's largest democracies, both are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist. There are also concerns about India's relations with Iran, including their increasing cooperation with the Iranian military.

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. In March 2008, an American businessman pleaded guilty to conspiring to illegally exporting technology to entities in India.

The United States views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The United States and India seek to elevate the strategic partnership further to include counterterrorism, defense, education, and joint democracy promotion.⁸

Policies

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 used 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. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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

⁸ Item 5.

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.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

The security concern relating to the guideline for foreign influence is set out in AG ¶ 7:

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. Three 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;

(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; 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's parents-in-laws, three sisters, and five friends are all citizens and residents of India. Applicant and his wife have financial holdings in India. India is one of the world's more aggressive nations in the collection of sensitive economic information. Applicant and his wife have business interests in India. These factors create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The same situation also creates a potential conflict of interest for Applicant. AG ¶¶ 7(a), 7(b), and 7(f) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8:

(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

(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.

Based upon the documented action of India in attempting to gain sensitive economic information from U.S. sources, the evidence does not support that it is unlikely that Applicant could be placed in a position to choose between the interests of his family in India and those of the United States. Although Applicant has some ties to the United States, the evidence is insufficient to document how strong those ties are. There is no evidence of U.S.-held assets, which is contrasted to his documented Indian investments and his wife's property assets. It is difficult to determine based upon the evidence that he has a deep and longstanding relationship with the United States such that he would resolve all conflicts in favor of the United States. As stated above, the protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. I am unable to find any of the mitigating conditions to be fully applicable. Despite the presence of some mitigation, it is insufficient to overcome the significant security concerns that exist.

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

- (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.

India engages in economic espionage aimed at the United States. 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 an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Applicant has done nothing whatsoever to question his loyalty and devotion to this country. However, he has simply been unable to overcome the heavy burden of showing that he is not subject to influence by India. His vulnerability to foreign pressure, coercion, exploitation, or duress remains a concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or foreign influence security concerns.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge