



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



In the matter of:)	
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)	ISCR Case No. 14-03196
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Richard L. Morris, Esq.

03/21/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. A 29-year-old employee, Applicant was born in India and lived there until 2005, when at the age of 19 he immigrated to the United States. He became a naturalized U.S. citizen in 2012. He met his burden to present sufficient evidence to explain and mitigate the foreign influence security concern stemming from his family ties to India. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 11, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

¹ Exhibit 1 (this document is commonly known as a security clearance application).

(DOD),² on May 28, 2015, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.³ The SOR is similar to a complaint. It detailed the reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference. He answered the SOR in writing on July 2, 2015, and he requested a hearing.

The case was assigned to me on September 18, 2015. The hearing was held as scheduled on November 12, 2015. The transcript of the hearing (Tr.) was received on November 24, 2015.

Procedural Matters

After cross-examination of Applicant about an Indian passport, which was surrendered and cancelled by the Indian government in 2012, and then subsequently destroyed by his employer in 2013, Department Counsel withdrew the foreign preference allegation under ¶ 1.a of the SOR.⁴ And so, the foreign preference matter under Guideline C is no longer an issue in this case.

Without objections, I granted Department Counsel's written request to take administrative notice of facts concerning the country of India.⁵

Findings of Fact

Applicant is a 29-year-old employee who is seeking to obtain a security clearance for the first time. He is employed as a security analyst in the field of information technology (IT) security, also known as cybersecurity. Previously in 2011, he was granted eligibility for a public trust position (e.g., a trustworthiness determination). He is registered with the Selective Service System; he is a registered voter; he has no criminal arrest record; and other than a single speeding offense, he has a good driver-history record.⁶

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006).

⁴ Tr. 44–48.

⁵ Tr. 15–16; Appellate Exhibit I.

⁶ Exhibits 1, B, C, and D.

1. Applicant's background in India and immigration to the United States

Applicant was born in India. He and an older brother were raised in a middle-class family. His father worked for an insurance company and his mother was a housewife who took care of her two sons. After completing a church-affiliated high school, he moved to the United States in 2005, when he was about 19 years old. He explained that he was motivated to immigrate because he wanted to pursue a dream of living in the land of opportunity to see if he could make a life and be successful in the United States.⁷

During 2006–2008, Applicant attended a local community college where he earned an associate's degree in IT. Then in 2008, he transferred to a university for a bachelor's degree in IT with a concentration in information security and networking, which he earned in 2010.

During 2006–2009, while a student, Applicant had a full-time job as a deputy store manager for a telecommunications company. From 2009 to 2011, a period that overlapped with his studies, he worked full-time as a network administrator for a healthcare organization. In 2011, he became a security analyst for a firm where he analyzed security requirements for various IT issues and designed and implemented solutions. Since February 2013, he has worked as a security analyst in an operations center where he monitors and mitigates information security risks. If he obtains a security clearance, he understands his employer will assign him to work for a military customer.⁸

2. Applicant's ties to India and the United States

Applicant became a naturalized U.S. citizen in January 2012.⁹ The same day he changed his last name because his current last name is easier for people to pronounce and remember, and because it sounds more American.¹⁰ He obtained a U.S. passport in March 2012.¹¹ The following month, he formally renounced his Indian citizenship and surrendered an Indian passport, which was cancelled and returned to him.¹² He renounced his Indian citizenship because he felt there was no reason to retain it in light of his U.S. citizenship.¹³ During the security clearance process in May 2013, Applicant

⁷ Tr. 67–68.

⁸ Tr. 59–60.

⁹ Exhibit N.

¹⁰ Tr. 43.

¹¹ Exhibit 1.

¹² Exhibit P.

¹³ Tr. 44.

had his employer's facility security officer (FSO) destroy the cancelled Indian passport by shredding the document.¹⁴ He has not obtained an Overseas Citizen of India (OCI) registration certificate from the Indian government to facilitate travel to India, nor does he intend to do so.¹⁵ Instead, any travel to India will be made with his U.S. passport with a standard visa from India.

Applicant's father, age 60, and mother, age 58, are both natives of India; his father is a citizen of India; and his mother is a U.S. citizen. (SOR ¶¶ 2.a and 2.b) They spend part of the year in the United States, where they live with Applicant's older brother. His father is retired from the insurance business. Applicant explained that his parents travel back and forth to India during the year to provide care for Applicant's elderly grandfather.¹⁶ When they are in India, he has telephone conversations with his parents about every two weeks to once a month.¹⁷ The topics of conversation consist of Applicant asking about his parents' health and well being, family matters, the weather, and other such matters.¹⁸ He visits his parents about once a month when they are in the United States living with his brother.¹⁹ His parents know he is employed in the IT field, but they are unaware of the specifics on his job, and they are unaware that he is going through the security clearance process.²⁰

Applicant's brother, age 33, is an Indian citizen and a lawful U.S. resident who lives in a state near Applicant. (SOR ¶ 2.c) His brother also works in the IT field as a senior systems analyst for a hospital chain.²¹ He is married to a U.S. citizen and they have one child.²² He intends to become a U.S. citizen when he is eligible to apply for naturalization. He knows that Applicant works in the IT field, but he is unaware of the company that employs Applicant or the duties he performs.²³ Applicant and his brother

¹⁴ Exhibit A.

¹⁵ Tr. 62–63. An OCI registration certificate is not a form of dual citizenship, but it does provide some travel and residency privileges to former citizens of India.

¹⁶ Tr. 52–53.

¹⁷ Tr. 40.

¹⁸ Tr. 40.

¹⁹ Tr. 53.

²⁰ Tr. 49–50.

²¹ Tr. 20.

²² Tr. 21.

²³ Tr. 24.

believe the details of their work are private matters, and so they do not discuss the specifics of their work.²⁴

Applicant's paternal grandfather, age 78, is a resident in and a citizen of India. (SOR ¶ 2.d) His grandfather is a retired school principal.²⁵ His contact with his grandfather is limited to brief telephone calls (two to three minutes in length) about once every four to six months to inquire about his health and well being.²⁶

Applicant has other family members in the United States.²⁷ His maternal grandparents are U.S. citizens living in the United States. He also has two sets of aunts and uncles who are U.S. citizens living in the United States.

At the time of the hearing, Applicant was engaged to be married to a citizen of India; she had a visa to travel to the United States; and the marriage was to take place here in December 2015.²⁸ They met online, they then talked on the telephone, and they eventually met in person.²⁹ They also involved their parents in the process to obtain the agreement or consent of the family.³⁰ His bride is from the same city in India, and she is trained as a dentist.³¹ She intends to work as a dentist once she goes through a lengthy process of obtaining a dentistry license in the United States.³² Her parents are residents in and citizens of India, and they are both employed as teachers.³³ Her only sibling, a younger brother, is living in the United States on a student visa for a master's degree program.³⁴

²⁴ Tr. 49.

²⁵ Tr. 50–51.

²⁶ Tr. 50.

²⁷ Tr. 51–54.

²⁸ Tr. 41–42.

²⁹ Tr. 61.

³⁰ Tr. 61.

³¹ Tr. 55.

³² Tr. 64–65.

³³ Tr. 55.

³⁴ Tr. 54–55.

3. Applicant's financial interests in India and the United States

Applicant has no financial, business, or property interests in India.³⁵ Here in the United States, in addition to his annual income of about \$120,000,³⁶ Applicant owns a rental property with a market value of \$170,000, and he is in the process of buying a home for a personal residence with a market value of \$307,000.³⁷ He has accumulated about \$40,000 in a 401(k) account; \$85,000 in bank accounts; and \$15,000 in investment accounts.³⁸ In addition, Applicant presented evidence of his financial responsibility consisting of (1) credit scores of 802 and 797, which are considered excellent, and (2) a net remainder (e.g., positive cash flow) of \$6,949 monthly.³⁹

4. Applicant's credibility during the hearing

Applicant was businesslike, serious, and respectful throughout the hearing, and he answered questions in an open and honest way. I was favorably impressed by Applicant, and I had no concerns about his credibility or truthfulness.

5. Character Evidence

Applicant presented extensive evidence (four affidavits and three witnesses) of his good character.⁴⁰ Taken together, this information shows Applicant is well regarded by the people who know him, and that he is known as an honest, reliable, and trustworthy person.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁴¹ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

³⁵ Tr. 22, 42.

³⁶ Exhibits F, G, H, and I.

³⁷ Tr. 65–66.

³⁸ Tr. 66–67.

³⁹ Exhibits E and F.

⁴⁰ Exhibits J, K, L, and M; Tr. 18–38.

⁴¹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

side of denials.”⁴² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁴³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁴⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁴⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁴⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁴⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴⁸

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴⁹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁵⁰

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a

⁴² 484 U.S. at 531.

⁴³ Directive, ¶ 3.2.

⁴⁴ Directive, ¶ 3.2.

⁴⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁴⁶ Directive, Enclosure 3, ¶ E3.1.14.

⁴⁷ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁹ *Egan*, 484 U.S. at 531.

⁵⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.⁵¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's family ties to India disqualify him from eligibility for access to classified information. Under Guideline B for foreign influence,⁵² the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.⁵³

The guideline contains several disqualifying conditions. Given the evidence of Applicant's family ties to India, I have considered the following disqualifying conditions:

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; and

AG ¶ 7(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 information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Based on U.S. concerns about (1) industrial and economic espionage, (2) the risk of terrorism in India, (3) India's relationships with Iran, Pakistan, and Russia, and (4) human-rights matters, India meets the heightened-risk standard in AG ¶ 7(a). This

⁵¹ Executive Order 10865, § 7.

⁵² AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

⁵³ AG ¶ 6.

conclusion is based on the facts set forth in Department Counsel's administrative notice request.⁵⁴

Applicant's family ties to India are sufficient to raise a concern. Applicant is a U.S. citizen living in the United States, but his father is a citizen-resident of India and his mother is a resident of India. Likewise, his paternal grandfather is a citizen-resident of India. His brother remains an Indian citizen until he goes through the process to become a naturalized U.S. citizen. In addition, Applicant's bride and future in-laws are connected to India as well. Taken together, his family ties to India are sufficient to justify further review.

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

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; and

AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant is a successful IT professional who has spent nearly all of his adulthood, since the age of 19, in the United States. He has lived, obtained higher education, and worked in the United States for the last 10 years. His financial assets, which are substantial for a young man, are in the United States. His ties or connections to his family members and in-laws in India are what you would expect given his age, family circumstances, and pending marriage. In other words, there is nothing unusual or odd about his family ties to India. The totality of the evidence demonstrates that Applicant has chosen to make a life for himself in the United States, as has most of his family (e.g., brother, maternal grandparents, aunts and uncles, and his parents to some extent). Taken together, I am persuaded that his family, educational, employment, and financial ties to the United States are stronger than his ties to India, which will tend to lessen and diminish over time.

⁵⁴ Appellate Exhibit I; see *generally* ISCR Case No. 14-03629 at 6-7 (Mar. 17, 2015) (discussing background information on India, including information of the nature of Indian's government, which is a parliamentary democracy, as well as the U.S.-Indian relationship, which President Obama stated will be vital to the U.S. strategic interests in Asia-Pacific and across the globe).

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has family ties to India. Those circumstances should not be dismissed or overlooked as fanciful or unrealistic, especially considering the matters the United States views of concern in India. Nevertheless, on balance, I am satisfied that this is not a case of “divided loyalties,” with an applicant who has one foot in each country, as contemplated by Guideline B.⁵⁵ Instead, I am satisfied that Applicant has both feet firmly planted in the United States and those ties, after the last 10 years (which is a significant period of time for a 29-year-old person), are now quite strong. Any security concern or potential conflict of interest presented by his ties to India is outweighed and overcome by his stronger ties to the United States.

Applicant’s background has been vetted through the immigration process in 2005, the public trust position process in 2011, the naturalization process in 2012, and now the security clearance process. He appears to be a model immigrant who is a law-abiding and financially-responsible citizen. He is also fully invested in the United States in various ways (e.g., renouncing his Indian citizenship as well as his education, employment, financial, and pending marriage in the United States). Looking ahead, those circumstances are unlikely to change. I am confident that Applicant can be expected to resolve any such concern or potential conflict of interest in favor of the U.S. interest.

Applicant met his burden to present sufficient evidence to explain and mitigate the foreign influence security concern stemming from his ties or connections to India. I have no doubts about his reliability, trustworthiness, and good judgment. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.⁵⁶ Accordingly, I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline C:	Withdrawn
Subparagraph 1.a:	Withdrawn
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a–2.d:	For Applicant

⁵⁵ See AG ¶ 6.

⁵⁶ AG ¶ 2(a)(1)–(9).

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge