



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
)
)
)
)
Applicant for Security Clearance)

ISCR Case No. 14-03278

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen born in India. His brother and sister are citizens and residents of India. He has a small bank account in India, and owns land and an apartment in India. He has mitigated the foreign influence concerns. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on April 4, 2015, the DoD issued a Statement of Reasons (SOR) detailing foreign influence security

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

concerns. On April 15, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated October 29, 2015. The FORM contained ten attachments (Items).

On November 12, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On November 20, 2015, Applicant responded to the FORM. There was no objection to Applicant's response to the FORM; it was admitted as Item A. On December 21, 2015, I was assigned the case.

Procedural Matters

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about India. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.

Findings of Fact

In Applicant's Answer to the SOR, he admitted his siblings were citizens and residents of India, that he had property and a bank account in India. I incorporate Applicant's admissions, as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 68-year-old chief analyst/advisor/senior electrical engineer who has worked for a defense contractor since June 1999 and seeks to obtain a security clearance. (Item 3) He was born in India and came to the United States in March 1979 at age 21. From March 1979 through December 1980, he attended a post-doctoral fellowship at a state institute of technology in the United States. (Items 3, 4) In June 1989, he became a naturalized U.S. citizen. (Item 3) In August 1999, his wife, who was also born in India, became a naturalized U.S. citizen. (Items 3, A) Applicant had obtained an Indian passport before he became a U.S. citizen. It has since expired and Applicant never used it after becoming a U.S. citizen and obtaining a U.S. passport. (Item 5)

Applicant's parents, parents-in-law, four brothers, and a sister are deceased. (Items 2, 3, 4, A) He has one remaining brother and one sister who are citizens and residents of India. His brother is or was a merchant,² and his sister is a housewife. (Item

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

² In Applicant's response to the FORM, he states his family members are self-employed merchants and have a cloth and grocery store similar to "mom & pop" stores in the United States. (Item A) The record is

4, A) Since he started his application, one of his brothers and one of his sisters died. His brothers at the time his commenced his application were age 71 and 77 and his sisters were 62 and 70 years of age. He has contact with his brother once or twice a year and with his sister once a year. (Item 4) He has two children. One is age 40 and became a naturalized U.S. citizen in October 1990. The other child is 33 years old and is a U.S. citizen due to being born in the United States. (Item 3)

Applicant has \$2,000 in a bank account in India. (Item 3) In March 2008, he and his wife purchased a \$55,000 apartment in India from which he collects \$200 in monthly rent. (Item 5) In March 2006, he and his wife purchased land in India, which has a fair market value of \$16,500. (Item 3) In March 2008 and October 2012, he visited India for less than 20 days on each trip. (Item 3) Applicant owns a home in the United States with a fair market value of \$400,000 and a condominium valued at \$200,000. (Item A) As of December 31, 2014, Applicant's IRA portfolio had a value of approximately \$1,014,000.

India

I have taken administrative notice that India is not hostile to the U.S. nor are its interests inimical to the United States. The United States and India enjoy good relations. India shares significant strategic interests with the United States, including counter-terrorism cooperation. The two countries have increased trade in goods and services. The United States is India's largest trading partner. The two countries cooperate on nuclear policy and engage in mutual efforts to address pollution and climate change. India's size, population, and strategic location give it a prominent voice in international affairs, and its growing industrial base, military strength, and scientific and technical capacity on issues from trade to environmental protection.

The United States recognizes India as key to strategic interests and has sought to strengthen its relationship with India. The two countries are the world's largest democracies, both 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 India's increasing cooperation with the Iranian military.

According to its constitution, 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 people.

Although the Indian government generally respects the human rights of its citizens, there remained numerous serious problems and significant human rights abuses. Police and security forces have engaged in extrajudicial killings of persons in

silent if his siblings are retired. His surviving sister maybe as young as 62 and his brother maybe as young as 71, which are ages individuals frequently retire. (Item 3)

custody, disappearances, 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 have been committed in recent years by separatist and terrorist groups.

Although largely positive, the relationship between the United States and India is not without its concerns. India is an avid collector of U.S. proprietary information, and there have been several criminal cases of industrial espionage arising out of India, both from private sources and from the government itself. 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 entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology, and acquisition of sensitive U.S. technology by foreign private entities.

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 to address differences and shape a dynamic and collaborative future. The United States and India are seeking to elevate the strategic partnership further to include cooperation in counter-terrorism, defense cooperation, education, and joint democracy promotion.

The United States government encourages small and medium size companies to expand their business opportunities in India. Many United States based companies, including large computer service and software development companies, have subsidiary companies and do business in India.

While there is a threat of terrorism in India, as well as in most areas of the world, the area of India where Applicant's family resides is not listed as an area of safety or security concern, or of instability because of terrorism. Terrorist activity does occur in India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups.

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 must be considered 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(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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(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

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

Foreign contacts and interest may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. The record shows that Applicant has a sister and brother who are citizens and residents of India. Although the relationship between the United States and India is largely favorable, India has a documented history of collecting U.S proprietary information. Also, Indian citizens have been involved in several criminal cases of industrial espionage against the United States. Based on these facts, Applicant's relationship with individuals in India raises a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. However, the evidence in the record mitigates these concerns.

Applicant was born in India and came to the United States at age 21. He has visited India twice during the last 10 years spending no more than 20 days there on either visit. His brother and sister are citizens and residents of India. The mere possession of close family ties with a person living in a foreign country or who is a citizen of 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 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 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-collection operations against the United States.

Applicant should not be placed into a position where he might be forced to choose between protecting U.S. information and a desire to protect his family members living in India from harm, pressure, enticement, or coercion. Applicant's contacts with his relatives who are citizens and residents of India raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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 U.S.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a), 8(b), 8(c), and 8(f) apply; however, AG ¶¶ 8(d), and 8(e) do not apply. Applicant's contact with his siblings is infrequent. He talks to his remaining brother either once or twice a year and talks to his surviving sister once a year. Even with infrequent contact, the relationship between siblings can raise a concern. However, there is little likelihood that his relationships with his relatives could create a risk for foreign influence or exploitation. AG ¶ 8(c) applies. His contacts with his siblings living in India are insufficiently frequent to raise the possibility of him being forced to choose between the United States and the welfare of his siblings.

AG ¶ 8(b) fully applies. There is no evidence that his relatives, who are Indian citizens and/or are living India are or have been political activist(s), challenging the policies of the Indian government. His brother is/was a merchant and his sister is a housewife. There is no evidence that terrorists, criminals, or the Indian government have approached or threatened Applicant or his siblings for classified or sensitive information. As such, there is a reduced possibility that his siblings or Applicant himself would be targets for coercion or exploitation. While the government does not have a burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a very heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States. He established that he can be expected to resolve any conflict of interest in favor of U.S. interest. He has lived his adult life in the United States. He came to the United States after finishing high school and has lived in the United States for the past 37 years. Applicant received his post-secondary education in the United States. His employment is in the United States and he has been with his current job for the last 16 years. Applicant, his wife, and children reside in the United States and are U.S. citizens. He has bank accounts, a sizable retirement account (\$1,000,000 plus), home (\$400,000 fair market value), and condominium (\$200,000 fair market value) in the United States. He has a \$2,000 bank account in India and owns land and an apartment in India with a value of approximately \$71,000. His property in India is minimal when compared to his financial interests in the United States.

In sum, Applicant's connections to India are less significant than his connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns. Any residual foreign influence security concerns are mitigated under the whole-person concept, *infra*.

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. I have incorporated my comments under foreign influence in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

A foreign influence decision concerning India must take into consideration the geopolitical situations in that country, as well as the dangers existing in them.³ Theoretically, Indian authorities could use Applicant's siblings to attempt to coerce Applicant. Applicant could 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. Nevertheless, Applicant's relationship with the United States is so much stronger than his relationship with India or siblings living there, I am confident he would inform security authorities of any attempt to obtain classified information from him.

Applicant left India 37 years ago, at age 21. He attended a state institute of technology in the United States on a post-doctoral fellowship. Although the possibility of attempted exploitation of Applicant is relatively low, Applicant's strong connections to the United States, his property holdings in the United States and lengthy employment establish "such deep and longstanding relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest." See AG ¶ 8(b).

After weighing the evidence of his connections to India and to the United States, and all the facts in this decision, I conclude Applicant has carried his burden of mitigating the foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"⁴ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a –1.e:	For Applicant

³ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

⁴ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge