



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



In the matter of:)
)
) ISCR Case No. 14-04006
)
)
Applicant for Security Clearance)

Appearances

For Government, Stephanie Hess, Esq., Department Counsel
For Applicant: Elaine L. Fitch, Esq.

05/09/2016

Decision

MASON, Paul J., Administrative Judge:

The foreign influence concerns raised by the Indian citizenship and residency of Applicant’s family members, and his financial interests in India, are overcome by his strong ties in the United States, and his significant U.S. assets. Eligibility for access to classified information is granted.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on April 19, 2013. On November 7, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on November 29, 2014. A notice of hearing was mailed to Applicant on October 19, 2015, scheduling a hearing for November 10, 2015. The hearing was held as scheduled. The Government's two exhibits (GE 1-2) and the Applicant's exhibit (AE A), consisting of five pages, were admitted in evidence without objection. Applicant, his wife, and his supervisor testified. The transcript (Tr.) was received by the Defense Office of Hearings and Appeals (DOHA) on November 20, 2015, and the record closed the same day.

Ruling on Procedure

Department Counsel and Applicant requested that I take administrative notice of certain facts about India. The facts which I will administratively notice appear after the Findings of Fact. The facts administratively noticed are limited to matters that are obvious to the average person, easily verifiable, and relevant to this case. The Administrative Notice Memorandum will be marked as Hearing Exhibit (HE 1) and admitted into the record. HE 2 and HE 3, which contain updated administrative source information related to footnotes 27 through 38 of HE 1, are also admitted into the record. (Tr. 6-7)

Findings of Fact

The SOR contains seven allegations under foreign influence (Guideline B). Applicant admitted his family members are citizens and residents of India. He admitted he has an Indian bank account which he is trying to close. He acknowledged owning an apartment in India, but receives no rental earnings from the property.

Applicant, 39 years old, was born in India in 1976. In April 1994, he received a bachelor's degree in electronics and communications at an Indian university. He never worked for the Indian government or served in the Indian military. Searching for better employment opportunities, he immigrated to the United States in April 1999. He worked for his first American employer from 1999 to 2003. While working for his second software development company from 2003 to 2007, he performed some subcontract work for his current employer, whom he has been working for since 2007. Applicant became a naturalized U.S. citizen in March 2013. This is his first application for a security clearance. (GE 1 at 7, 22, 37; Tr. 17-27, 100)

Applicant married his wife in India in December 2004. His wife immigrated to the U.S. in 2005. After receiving her U.S. work visa, she began working in 2007 in a software development position. In 2014, Applicant's wife received her resident visa. She intends to seek American citizenship in 2016 because of the educational advantages for her children, ages six and four, who were born in the United States. Applicant's wife has an aunt, a naturalized U.S. citizen living in the United States. She speaks with her on a regular basis. (GE 1 at 16; Tr. 34, 66, 69, 79-80, 82-84)

Applicant's mother and father are citizens and residents of India. (SOR 1.a) His 53-year-old mother has never worked outside the home. Applicant's 56-year-old father is

an accountant in a commercial paddy mill that processes paddies into rice. He may retire from this employment, especially if the mill is purchased. He has never worked for the Indian government nor has he served in the Indian military. Neither Applicant's mother nor his father receive benefits from the Indian government. Generally, Applicant communicates with his parents by telephone on a weekly to monthly basis, but occasionally there may be no communication for more than a month. These conversations will last about 15 to 20 minutes and the topics of discussion are the family's health and the daughters' activities. (GE 1 at 18-20; Tr. 38-43; 64, 71-73)

Applicant's 33-year-old brother is a citizen and resident of India. (SOR 1.b) He is married with two children. He works in software for an American medical company. His wife is also employed in software. Neither he nor his wife have worked for the Indian government. They have never been involved in Indian politics or received benefits from the Indian government. Applicant communicates with his brother every two months to every six months by telephone and sometimes through email. Applicant's brother has been trying to sell the apartment identified at SOR 1.g. (Tr. 44)

Applicant's 36-year-old sister and 33-year-old brother-in-law are citizens and residents of India. (SOR 1.c) Applicant's sister is a housewife with two children. His brother-in-law, a software developer, came to the United States in 2012 for work-related reasons, but did not visit Applicant. Neither have ever worked for the Indian government or been involved in Indian politics. They have never received benefits from the Indian government. Applicant does not communicate with his sister or brother-in-law and has no contact with their two children. (GE 1 at 25; Tr. 44-49)

Applicant's 53-year-old mother-in-law, a citizen and resident of India, has always been a housewife. (SOR 1.d) She lives with her son, Applicant's brother-in-law. (SOR 1.c) She has never had a connection to the Indian government or politics. Applicant's communication with his mother-in-law occurs when his wife initiates weekly telephone conversations. His mother-in-law has visited the United States twice. She is unaware of Applicant's job. (Tr. 50-52, 84)

Applicant's five cousins are citizens and residents of India. (SOR 1.e) He last saw them in 2011 or 2012, and he last talked to them in 2013 by telephone. He does not know their occupations. (Tr. 52-53)

In November 2001, Applicant opened an Indian bank account for about \$1,000. (SOR 1.f) He used the funds to pay for the mortgage on an apartment that he purchased in May 2004. He also used the account to cover some of his parents' expenses until he married in December 2004. He tried to remotely close the account in compliance with Indian bank procedures that apparently have changed. The current procedures require him to appear in person to close the account. Though he has no immediate plans to travel to India, he will close out the account during the next trip. (GE 1 at 27; Tr. 54-58; AE A at 3-4)

In May 2004, Applicant purchased an apartment for about \$37,500. The property's current value is about \$45,000. (SOR 1.g) He purchased the dwelling for his parents and also as a place for him to stay during his visits. Applicant's father managed the property for a while. When his brother unsuccessfully tried to sell the apartment for three or four months, Applicant temporarily transferred ownership of the apartment to his parents to facilitate the sale. When the property is sold, they will turn over the proceeds to Applicant. (GE 1 at 27-28; Tr. 58-61)

Applicant has traveled to India eight times since 1999. The purpose of the first trip was his engagement to his wife, followed by a trip to marry her in December 2004. The remaining trips were for visitation purposes, or for marriages, or for death anniversaries. His last visit was in 2015. During his most recent two trips, Applicant lodged at his mother-in-law's home, but he does not always lodge at the same location. Applicant's parents visited him in the United States once in 2012. They are planning a visit in the next six months and Applicant will help with the plane fare. (Tr. 43-44, 64, 72)

Applicant's assets in the United States include his home that he purchased in 2005. The home currently has about \$100,000 in equity. Both Applicant and his wife have a combined total of \$90,000 in their respective checking accounts. He has about \$215,000 in his retirement account and his wife has about \$7,000 in her retirement account. Applicant estimated his aggregate net worth was at least about \$350,000. Except for the bank account and apartment, he has no other financial interest or assets outside of the United States. Although he has never been contacted about his work by anyone from India, should someone attempt contact, Applicant will contact his facility security officer (FSO). (GE 1 at 27-30; Tr. 30-33, 61)

Before his children were born, Applicant performed volunteer work for county festivals. He helped in the registration of events or constructing stands and displays. When he is not attending his home owner's association (HOA) meetings, he spends most of his spare time transporting his children to art, swimming, soccer, and music activities. Since becoming an American citizen, Applicant has voted in two elections. Applicant's wife believes that he is a good father. (Tr. 32, 35-37, 82-83)

Character Evidence

Applicant's supervisor has been working for Applicant's employer for 15 years. The supervisor met Applicant in 2004 when the latter performed some subcontract work. When Applicant was hired full time in 2007, the supervisor began supervising him. For the last five years Applicant has been supervising two other employees. Based on Applicant's sound judgment, his team player attitude and leadership qualities, coupled with his ability to solve problems, his supervisor recommends him for security clearance access. (Tr. 98-110)

On November 6, 2015, the senior vice president of Applicant's employer provided a one-page character reference. In the 12 years that he and Applicant have worked together, he considered Applicant to be a top performer. He received several

performance bonuses. Applicant is a team player who complies with the employer's policies and procedures. Applicant's problem solving abilities substantiate the senior vice president's recommendation that Applicant be granted a security clearance. (AE A)

Administrative Notice

Republic of India (India)

India is a sovereign, socialist, secular democratic republic with multiple political parties conducting government activities in a federal parliamentary democracy model. The country has about 1.21 billion citizens.

The United States considers India key to its strategic interests and has strengthened its relationship after a period of strained ties caused by India's development of nuclear weapons. The United States has removed or revised U.S. export requirements for sale to India of dual-use and civil nuclear items, including nuclear reactors, even though there have been several documented cases involving the illegal export of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to be applied for prohibited purposes. As of 2000, India was considered actively engaged in economic intelligence collection and industrial espionage directed at the United States. By 2008, India was considered heavily involved in criminal espionage in illegally obtaining U.S. export-related products.

Both countries are dedicated to the free flow of commerce, to fighting global terrorism, and establishing stability in Asia. The United States is India's largest trading and investment partner. Foreign assistance to the country was about \$3 billion, with the United States providing about \$126 million in developmental assistance.

While India and the United States have a longtime partnership in fighting global terrorism, the country continues to have problems with domestic terrorism. Of the more than 2,300 people who lost their lives in 2008 because of terrorist incidents, 180 were killed during an attack on an internationally known hotel in November 2008. Terrorist activity is also concentrated in Kashmir, a disputed area bordering Pakistan. Separatist and terrorist groups are still active in other parts of the country. Incidents in 2012 and 2013 demonstrate that terrorism continues to be a serious problem in the country.

Regarding human rights issues, the government of India generally respects its citizens' rights. However, corruption in the police and security forces continues to be a problem, particularly in criminal investigations and during efforts to suppress separatists and terrorist groups. Abusive practices against women and children, and caste-based discrimination persists, despite criminal penalties for violations. But there is no evidence that India uses force or duress to obtain economic intelligence from its citizens.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Following the security concern definition 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 must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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 as to obtaining a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains two potential disqualifying conditions that may be pertinent 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;

(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 individual's desire to help a foreign person, group, or country by providing that information;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign influence and exploitation; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk or foreign influence or exploitation.

Applicant has ties of affection to his parents, brother, and mother-in-law, who are citizens and residents of India. His contact with these foreign family members varies from weekly to monthly contact with his parents, to between once every two to six months with his brother. For approximately ten years, Applicant has been living with his wife, still a citizen of India. She communicates with her mother (Applicant's mother-in-law) on a weekly basis. He has visited India eight times since 1999. His parents visited him once in 2012. In sum, Applicant's family ties in India, weighed against the ongoing threat of terrorism in India creates a heightened risk of foreign influence within the scope of AG ¶¶ 7(a) and 7(d), and a potential conflict of interest under 7(b). Applicant has an Indian bank account totaling about \$475. He owns an apartment worth about \$45,000. The financial interests could subject Applicant to a heightened risk influence as defined by AG ¶ 7(e). AG ¶ 7(a) does not apply to Applicant's sister, brother-in-law, and cousins because he has no communication or contact with them.

The potential mitigating conditions under AG ¶ 8 of the foreign influence guideline are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 minimal, or the individual has such deep and long-lasting 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 I could create a risk for foreign influence or coercion; 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 to effectively to influence, manipulate, or pressure the individual.

The mere possession of close family ties to persons in a foreign country is not disqualifying under the guideline for foreign influence. But if an applicant has frequent contact with only one relative living in a foreign country, that contact alone may be sufficient to create a heightened risk of foreign influence that could possibly result in the compromise of classified information.

Applicant has contacts with his parents, brother, and mother-in-law in India. His mother has always been a housewife. His father is an accountant in a paddy mill who has never worked for the government or served in the military. Applicant's brother, who works as a software developer for an American company, has never been employed by the Indian government. Applicant's mother-in-law has always been a homemaker. None of Applicant's family members, including his sister, brother-in-law, and cousins (those individuals that he has had no communication with) have ever served in the Indian military. India is a democracy that has developed a strong bond with the U.S. in the areas of trade, investment, as well as in fighting global terrorism. It is highly unlikely that the country would jeopardize that relationship by exploiting Applicant or a foreign family member through their relationship with him. On balance, it is improbable that Applicant would be placed in a position of having to choose between the interests of his family in India and the interests of the United States. AG ¶ 8(a) applies.

Applicant's ties to his family members in India pale in comparison to his stronger ties to the United States. He has been living and working in the United States since 1999. He purchased his home in December 2005. He began working for his current employer in 2007. Since receiving his American citizenship in 2013, he has voted in two U.S. elections. Though his wife is not a citizen yet, she has been working for American employers since 2007. She is on a path toward becoming a U.S. citizen in 2016, having received her resident visa in 2014. AG ¶ 8(b) applies.

AG ¶ 8(c) is not applicable because Applicant's contacts with his parents, brother, and mother-in-law are neither casual nor infrequent. Conversely, the mitigating condition applies to his infrequent and casual contacts with his sister, brother-in-law, and cousins, because of the small likelihood of a risk for foreign influence or exploitation.

Applicant's Indian bank account contains about \$450, and his \$45,000 apartment in India bring his total Indian assets to about \$45,450. His documentation reflects that he cannot close the bank account unless he appears personally. If he decides to return to India, he will close the account. He is trying to sell the apartment with the help of his parents. Applicant has significantly more assets in the United States. He has about

\$100,000 of equity in his American home that he purchased in 2005. Applicant and his wife have a combined total of \$90,000 in their respective checking accounts. They have about \$222,000 in their retirement accounts, and a net worth of at least \$350,000, probably more. It is unlikely that Applicant's assets in India, which represent less than 14% of his U.S. assets, could be used as a basis for influence or coercion. AG ¶ 8(f) applies.

Whole-Person Concept

I have evaluated this case under the specific disqualifying and mitigating conditions of the foreign influence guideline. I now consider those findings in the context of the nine general factors of the whole-person concept identified in 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 the participation was 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 on careful consideration of the specific guidelines and nine factors for the whole-person concept.

In weighing the record as a whole, I have carefully considered the factor of domestic terrorism that still exists in India. However, the chances of it occurring against foreign family members of persons that are employed in a position requiring a security clearance, are higher in countries that support terrorism, or have an authoritarian form of government, or are hostile to the United States. India, a country with a democratic governmental system, is a friend of the United States, and is committed to a longstanding partnership with this country in fighting terrorism, both domestically and internationally. Although Applicant has ties with his family members in India, he has stronger relationships and ties in the United States. Applicant received his U.S. citizenship in 2013. His two daughters were born in the United States. His wife intends to apply for citizenship as soon as she is eligible in 2016.

Applicant's supervisor and the senior vice president have observed Applicant deliver a quality job performance since he performed subcontract work in 2004. Applicant's praiseworthy involvement in the yearly county festivals, his HOA, and his children's activities cannot be undervalued. Based on his strong ties to the United States that have developed since 1999, his participation in his community events and responsible involvement in his children's activities, Applicant has mitigated the security concerns arising from the guideline for foreign influence.

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, Guideline B): FOR APPLICANT

Subparagraphs 1.a-1.g: 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.

Paul J. Mason
Administrative Judge