



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 15-00165

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns regarding family members and interests in India. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On July 3, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken 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 (AG) effective within the DOD on September 1, 2006.

In a letter signed July 21, 2015, Applicant admitted the allegations with explanations and requested a hearing. I was assigned the case on October 28, 2014, 2015. On November 19, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for December 8, 2015. The hearing was convened as scheduled

The Government offered one exhibit (Ex.), accepted as Ex. 1, and one hearing exhibit (HE), accepted as HE-1. The hearing exhibit included a request for administrative notice concerning certain facts pertaining to the Republic of India. With no objections, I accepted the documents in evidence. Applicant gave testimony,

introduced a witness, and offered a document, which was accepted into the record as Ex. A without objection. She was given until January 4, 2016, to submit any additional materials. The transcript (Tr.) of the proceeding was received on December 16, 2015. On January 4, 2016, the Government forwarded to me one document received from Applicant on December 31, 2015. It was accepted without objection as Ex. B. and the record was closed.

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the Republic of India (India). Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (*citing* ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from Government reports. Various facts pertaining to this nation were derived from the offered request and its attachments.

India is a sovereign, secular democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.2 billion. Since gaining independence in 1947, India has had a tumultuous history, and continues to experience terrorist and insurgent activities.

The Indian government generally respects the rights of its citizens. The most significant human rights problems still existent are prison and security force abuses including extrajudicial killings, torture, and rape. Authorities infringe on citizens' privacy rights, and corruption exists at all levels of government.

India, along with other countries, has been involved in criminal espionage and cases involving violation of U.S. export controls. Cases have involved 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 delivery. Governmental and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

Despite past differences regarding India's nuclear weapons program, and its cooperation with Iran in some policy areas, the United States recognizes India as key to its strategic interests and has sought to strengthen the relationship. 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, fighting terrorism, and creating a strategically stable Asia.

India and the United States are partners in the fight against global terrorism. A Bilateral Counterterrorism Cooperation Initiative was launched in July 2010. As of 2011, the number of terrorist-related deaths had decreased. The State Department's Anti-Terrorism Assistance program has conducted scores of training courses for Indian law

enforcement officials. In 2011, a U.S.-India Homeland Security dialogue was established to foster cooperation on various law enforcement issues. As of November 2012, counter-terrorism cooperation with India was described by the Obama administration as a “pillar of the bilateral relationship” between the two countries.

Findings of Fact

Applicant is a 36-year-old program manager. She was born in India, where she earned a bachelor of engineering degree in 2000. She came to the United States in 2002, following an internal work transfer. She married in 2003, and later decided to become a United States citizen. Tr. 27. The couple now has two children. Applicant has been working with federal contactors since 2008. During much of that time, she retained a public trust position. Tr. 37. In 2013, she became a naturalized United States citizen and received a United States passport. She travels on her United States passport. Tr. 28.

Applicant’s father is a citizen and resident of India. He is a retired, private sector, construction manager. He has little outside contact with others since his wife died in 2010. Therefore, Applicant speaks with him several times a week by telephone. She would see him when her family would visit and stay with her in-laws, prior to their relocation in the United States. Her father knows nothing of Applicant’s work or career. Tr. 33. He presently wishes to remain in India. Tr. 21. For cultural reasons, it is a taboo in the Indian patriarchal society for parents to stay with a daughter. Tr. 31. Consequently, he does not wish to reside with his daughter and her husband. Applicant used to send him small sums of money, but no longer does so. She noted that if his health becomes a major concern, she will apply for a green card on his behalf to come to the United States. Tr. 21.

Applicant’s father-in-law and mother-in-law are now residents in the United States, where they possess green cards and live with Applicant and her family. In about 2009, Applicant and her husband acquired a residence for her in-laws in India, valued at about \$90,000. There, Applicant and her family would stay when visiting her in-laws. Related to that investment are two bank accounts in India, one is depleted and one has a balance of about \$2,000. The latter account is reserved for making payments on the loan used to acquire the property. Now that Applicant’s in-laws are living in the United States permanently and are becoming United States citizens, the family is in the process of selling the property and closing the accounts. Tr. 18-19. Her in-laws recently returned to India with Applicant’s power of attorney to list and sell the property, then close the bank accounts. Ex. B (Property listing). Their intent is to return to the United States and give all proceeds to Applicant for reinvestment in this country. Tr. 19. These are Applicant’s only remaining interests in India. She has no inheritance rights through her father. Tr. 36.

With her family and life now settled in the United States, Applicant has few notable contacts remaining in India. The handful of acquaintances and friends she retains of Indian nationality either work and live in the United States, or are people she makes occasional comments to through social media. Tr. 34. Some work or worked for India-based information technology companies. Applicant does not follow their careers.

Here in the United States, Applicant and her husband have two homes. The townhouse was purchased in 2004 and is valued at about \$460,000. A single family dwelling acquired more recently is valued at about \$700,000. The homes were purchased with 20% down. The couple is timely on their mortgages. Tr. 23. They have around \$400,000 of equity in the properties. The couple's joint annual income is about \$300,000. Tr. 39. Combined, they have over \$400,000 in United States savings and retirement plan balances.

The couple's children are aged 10 and 4. Both attend a public school. Applicant is active within her community, working for children's groups and at homeless shelters. Tr. 24. The family regularly attends a local house of faith and annually celebrates the Fourth of July holiday. Applicant votes in each election. Her husband is a senior program manager. They have three automobiles, only one of which is subject to a loan. It is the couple's intent to remain in the United States permanently and to continue following Applicant's "American dream." Tr. 26; Ex. A (Letter).

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(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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

Applicant has ties of affection, independently or through her husband, for her father and in-laws. She owns a \$90,000 property in India and maintains two bank accounts there. Given these facts, disqualifying conditions AG ¶¶ 7(a), (b), and (e) apply:

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;

AG ¶ 7(b) connection 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; and

AG ¶ 7(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 of foreign influence or exploitation.

In finding disqualifying conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist activities have transpired within India. This fact is sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an applicant may be subject to coercion or undue influence when a third party pressures or threatens an applicant's family members. Under these facts, while unlikely, third party coercion concern potentially exists in India. Therefore, there is sufficient evidence to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, and find the following apply:

AG ¶ 8(a) the nature of the relationship 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.;

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 U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

AG ¶ 8(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.

The mere possession of close family ties to a person in 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 frequent, non-casual 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.

Here, with the move of Applicant's in-laws to the United States, where they now hold green cards and reside with Applicant and her family, only Applicant's father poses genuine security concern. He, however, has no nexus to a foreign government or military, or know much about Applicant's work or personal activities. He worked in the private sector. With these factors in mind, the nature of the foreign country must be considered in evaluating the likelihood of exploitation. The United States and India have a long-standing, stable relationship, and share common strategic goals. India is a democracy and a partner in combating terrorism. There is no evidence it coerces its citizens in order to manipulate foreign kin. Given the individual involved and the nature of the country at issue, it is unlikely that India would exploit Applicant or her father

based on their relationship. It is also unlikely that Applicant would have to choose between the interests of her aged father in India and the interests of the United States. AG ¶ 8(a) applies.

Moreover, Applicant has developed strong ties to the United States, which weigh in her favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. She has lived in the United States for nearly 15 years. This is where she started her career, married, chose to make her new home, had two children, and became an active part of her local society. She has relatively extensive financial investments here. She has no intention to return to India to live. She is already building toward a future for his family and a retirement in the United States. In short, the passage of time has weakened Applicant's links to India in favor of strengthening her ties in the United States. Telephone calls and occasional trips to India to see her father have taken a clear second place to Applicant's day-to-day professional and family life here. There is insufficient evidence to conclude Applicant's relationship abroad with her father is so deep and longstanding as to outweigh these factors. I conclude that Applicant would choose her more significant U.S. ties over her foreign connection, in the event a conflict of interest arose. AG ¶ 8(b) applies.

Finally, Applicant is in the process of listing and selling her property interest in India, thus reducing, if not eliminating, its significance as a foreign influence. What remains are two bank accounts, one which is depleted and one with a small balance held to facilitate matters associated with the property. Such a minimal balance of this nature is insufficient to sustain security concerns. Consequently, AG ¶ 8(f) applies.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guideline, but some warrant additional comment.

Applicant is a 36-year-old program manager who was born in India. She earned a bachelor of engineering degree in 2000 and accepted a work transfer to the United States in 2002. She married and decided to make the United States her permanent home. She and her husband are now settled with two children. Working for federal contractors since 2008, she has maintained a public trust position without adverse incident. Over the years, she became an active member of her community and began building for her family's financial future. In 2013, she became a naturalized United

States citizen and received a United States passport. It is her intent to raise her children in the United States and to retire with her husband in this country.

In contrast, Applicant's aged father remains in India. She would have him come to her, but it is taboo within his culture for a parent to be supported by a daughter. The father lives a quiet life. He is retired from private company employment and is self-sufficient. At present, Applicant is actively trying to dispose of a \$90,000 property she and her husband bought for her in-laws' enjoyment. She is also disposing of a depleted bank account and another account with a nominal balance that has been maintained for expenses related to the property. Meanwhile, her in-laws have received green cards from the United States government and live full-time with Applicant and her husband. Overall, Applicant and her family are enjoying her American dream and are settled in the United States with considerable domestic holdings. Applicant's loyalties are clearly stacked in favor of her family and life in the United States.

When disqualifying conditions are raised, the burden is placed on an applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant presented sufficient information about herself, her family, her foreign holdings, and the country at issue to mitigate foreign influence security concerns. Clearance is granted

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 B:	FOR APPLICANT
Subparagraphs 1.a-1.f:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge