



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08268
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq. Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

April 22, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on February 4, 2005. On October 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 2, 2007; answered it on November 16, 2007; and requested a hearing before an administrative judge. DOHA received the request on November 19, 2007. Department Counsel was prepared to proceed on December 7, 2007, and the case was assigned to me on December 12, 2007. DOHA issued a notice of hearing on February 6, 2008, setting the case for February 27, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1

and 2 were admitted in evidence without objection. Applicant testified on his own behalf, presented the testimony of five witnesses, and submitted Applicant's Exhibits (AX) A through EE, which were admitted without objection. AX FF and GG were offered and then withdrawn.

I granted Applicant's request to keep the record open until March 7, 2008 to enable Applicant to submit additional evidence. Applicant timely submitted AX HH, to which Department Counsel objected (HX IV). My ruling on Department Counsel's objection is set out below. The record closed on March 7, 2008. DOHA received the transcript of the hearing (Tr.) on March 11, 2008. Eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Administrative Notice

Department Counsel and Applicant's counsel both requested that I take administrative notice of relevant facts about the Republic of India. Department Counsel's request is attached to the record as Hearing Exhibit (HX) I, and Applicant's request is HX II. The facts administratively noticed are set out below in my findings of fact.

I took administrative notice as requested by Department Counsel, except for the facts based on Enclosures 5 and 6 to HX I. I determined that Enclosure 5, the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for the year 2000, was too old and its basis for its conclusions were too limited to be a reliable source of current information. See ISCR Case No. 03-21434 at 4-5 (App. Bd. Feb. 20, 2007). I determined that Enclosure 6, the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for the year 2005 is based on the same methodology as Enclosure 5, and is too limited to be the basis for administrative notice about India, since the only reference to India in the report is one incident in 2004 where a U.S. software manufacturer reported that a source code and confidential design documents were stolen from a research and development center in India. I offered Department Counsel the opportunity to offer these three documents as government exhibits, akin to learned treatises under Fed. R. Evid. 803(18), to be given whatever weight I determined appropriate in my decision, and he accepted that offer. The enclosures to HX I were marked as GX 3 and 4 and admitted without objection.

I also took administrative notice as requested by Applicant's counsel, except for the matters on page 16 of HX II, which are based on a report from Human Rights Watch, an advocacy group, and the matters on pages 17-22, which are argument rather than a recitation of facts (Tr. 68-69).

Memorandum of Law

Applicant's counsel submitted a memorandum of law for my consideration, attached to the record as HX III.

Evidence of Detention and Interrogation of Suspected Terrorists

Applicant submitted evidence that the Central Intelligence Agency (CIA) has detained suspected terrorists in secret locations and used harsh interrogation methods (AX HH). Department Counsel objected on the ground that the evidence was irrelevant (HX IV). After examining the proffered evidence and considering Department Counsel's objection, I have determined that the evidence is irrelevant to the question whether Applicant's family, financial, and military connections to India raise security concerns that have not been mitigated. Accordingly, AX HH is attached to the record but not admitted.

Correction of Transcript

Applicant's counsel submitted a list of corrections to the transcript. Department Counsel objected to the corrections changing the date of Applicant's entry into the U.S. from 1993 to 1992 and correcting the spelling of Applicant's sister's name. For the purposes of this decision, I have accepted 1992 as the date of Applicant's entry into the U.S., because he provided that date on his SF 86 (GX 1 at 5, question 12). The corrected spelling of his sister's name is consistent with AX B and has no decisional importance. The list of proposed corrections and an annotated copy of the transcript are attached to the record as HX V. Department Counsel's comments regarding the corrections are attached as HX VI.

Amendment of the SOR

At the conclusion of the hearing, Department Counsel moved to amend the SOR by adding two allegations based on evidence adduced during the hearing. First, he moved to amend the SOR by adding an allegation that Applicant owns two condominiums in India worth a total of \$20,000. This information was provided by Applicant on his SF 86 (GX 1 at 5) and repeated at the hearing. Second, he moved to amend the SOR by adding an allegation that Applicant has a brother-in-law and sister-in-law who are citizens and residents of India. Applicant objected to both amendments. I denied the motion (Tr. 200). However, I have considered the significance of Applicant's brother-in-law and sister-in-law in determining whether the disqualifying condition under AG ¶ 7(d) is raised. I have considered all his property interests in India, including the condominiums, in my whole-person analysis and in determining whether the security concerns based on the property interests alleged in SOR ¶¶ 1.c and 1.e are mitigated.

On my own motion, I have amended SOR ¶ 1.d to conform to the evidence by changing the beginning date of Applicant's service in the Indian Navy from 1965 to 1969.

Findings of Fact

In his answer to the SOR, Applicant admitted all the factual allegations, disputing only his length of service in the Indian Navy (SOR ¶ 1.d). His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 59-year-old native of India. He attended the National Defense Academy in India from 1965 to 1969, was commissioned as an officer in the Indian Navy, rose to the grade of commander, and retired in 1991. He served several tours at sea, serving in the coastal waters of India. He held a security clearance while serving aboard ships, but he was not involved in intelligence work (Tr. 172). He was never involved in any joint operations with Iran (Tr. 172). He and his wife described their lives in the Navy in Spartan terms—low pay, frequent moves, poor housing, and poor food (Tr. 106, 144-45).

Applicant receives retirement pay for his Navy service of about \$230 per month, which is deposited in a bank account in India. The bank account is used solely to receive his Navy retired pay (Tr. 155). He has no contact with friends or former colleagues in the Indian Navy, because he is a U.S. citizen and the Indian Navy restricts its officers from interaction with foreigners (Tr. 183).

Applicant came to the U.S. in 1992, sponsored by his older brother. After coming to the U.S., Applicant worked as a life insurance salesman and a software salesman, until he founded his own company in 1999 (Tr. 146-47). His company has about 15 employees and provides information technology consulting. He is the president, chief executive officer and sole owner of the company. Even though he does not hold a clearance, his company has several classified contracts (Tr. 133). He estimates the value of his business to be \$5.7 million (AX A).

Applicant and his wife were married in India in September 1973. Both families disapproved of the marriage because Applicant is Hindu and his wife is Parsi. Only his mother and one of his six sisters attended his wedding. His mother attended to perform Hindu rites (Tr. 140). He became a U.S. citizen in June 2000, and his wife became a U.S. citizen in September 2003. They have three adult children who are all naturalized U.S. citizens. When asked why he became a U.S. citizen, he responded as follows:

Sir, I love this country. I will tell you why I love this country . . . Americans do not know how great is this country because they don't go out and see the sufferings in a third world country.

Which is the country in the world that allow [an immigrant like me] to come to 6.7 million dollars of net worth in 16 years? Which country where three white girls will decide to marry my nephews? And which country one white male will decide to marry my niece? That's why you were saying that you

saw some Italian, Polish [guests at my son's wedding]. They're my daughter-in-laws and our grandchildren.

Which country will worship Jesus Christ and Hindu gods together? My wife does it. They said . . . do you denounce India and the liberation of it. I say, "I do!" because I am out of that nonsense. That's why I love this country.

(Tr. 166-67.)

Applicant's wife works as the office manager for Applicant's business (Tr. 104). Her father died in 1983 (Tr. 108). Her 85-year-old mother lives in India. Applicant's wife has a brother and sister in India, but she has virtually no contact with them (Tr. 129). She last spoke with her mother at her son's wedding, where her mother performed a religious rite, about a year before the hearing. She occasionally calls her mother to check on her well-being (Tr. 108).

Applicant's parents are deceased. He traveled to India in 1999 for his father's funeral. He visited his gravely ill mother in July 2000 and returned to India later that year for her funeral. He traveled to India in December 2000 for a niece's wedding and in January 2005 for a nephew's wedding (Tr. 162-64). Even though he is not close to his sisters, he attended because they insisted he come and perform a Hindu rite (Tr. 182).

Applicant's brother is a U.S. citizen and resident and works in the U.S. as an engineer. One sister is a U.S. citizen and resident and works as an insurance underwriter. He has six other sisters who are citizens and residents of India. One is a gynecologist; the other five are housewives (AX B). Three of his sisters have children in the U.S. who are married to U.S. citizens, and they visit them regularly (Tr. 183-85). Two of his sisters have green cards and spend considerable time in the U.S., and one of them aspires to become a U.S. citizen (Tr. 142). He has contact with his sisters in India by mail or telephone about twice a year. None of his sisters are employed by or have any connection with the government of India. Four of his sister's spouses are retired, one is an ophthalmic surgeon, and one is a civil engineer. None have any connection with the government of India except the civil engineer, who sometimes works on government contracts. (Tr. 159-61, 169-70).

Applicant's mother-in-law is a citizen of Iran residing in India. She is a native of India. At age 15, she married an Iranian and was persuaded by her husband to become an Iranian citizen. She is 85 years old and has spent a total of about 30 days of her life in Iran. She went to Iran in 1983 to offer prayers for her deceased husband (Tr. 112-14; TAB C). She speaks a dialect that Applicant cannot speak or understand, and her English is rudimentary. Applicant testified he feels no affection for or obligation to his mother-in-law because of the suffering she has inflicted on his wife (Tr. 187).

Applicant owns his home and a rental property in the U.S. (Tr. 153). He owns two small condominiums in India that he bought while he was in the Indian Navy. He estimates that together they are worth about \$20,000. They are vacant because he has

been unable to sell them (Tr. 173-76). He does not rent them for fear that squatters will occupy them. He regards them as a burden. He testified, "I hope that somebody can take it away and get the hell out of this." (Tr. 174.)

A retired U.S. Navy admiral who worked for a defense contractor and became a mentor for Applicant testified on his behalf. When they first became acquainted, they felt "a very close bond between seamen." Based on five years of regular contact, the admiral regards Applicant's character as "absolutely top of the line." He strongly believes Applicant should have a clearance (Tr. 40-43).

An employee of a federal contractor who employed Applicant as a subcontractor described him as very reliable, responsible, and responsive (Tr. 54-55). The witness, a Naval Academy graduate who has held a clearance for many years, knew Applicant's family, attended his son's wedding, and described him as very family oriented, trying to pass on his family values to his children (Tr. 57). The witness recommended strongly Applicant be granted a clearance (Tr. 60).

Applicant served for two years as vice-president and two years as president of a charitable, community, and social organization composed of about 200 families from the same region in India. A physician and friend of Applicant who served with him in the organization testified he found Applicant to be very responsible, discrete, dependable, and trustworthy (Tr. 85-94).

Applicant's neighbor for more than four years testified described Applicant as "of the highest integrity . . . completely trustworthy, incredibly smart, [and] incredibly worldly." She regards him as a good neighbor who is very generous, kind, open and helpful (Tr. 108-09).

Government documents presented by Department Counsel reflect concern in the U.S. Congress about India's increasing cooperation with Iran and transfers of equipment and technology related to weapons of mass destruction to Iran by Indian companies (GX 4). The documents also reflect that in the year 2000 India was as a major practitioner of industrial espionage (GX 5). None of the documents suggest, however, that India abuses its citizens as a means of collecting economic intelligence.

I have taken administrative notice of the facts below. India's Constitution describes it as a "sovereign, socialist, secular democratic republic." It is a multiparty, federal, parliamentary democracy. The U.S. and India are the world's largest democracies. The U.S. is India's largest trading partner and largest investment partner. In the past, U.S. policy toward India was dominated by concerns over India's nuclear weapons programs and slow pace of economic reforms. More recently, the U.S. has regarded India as a growing world power with which it shares common strategic interests. Since 2004, bilateral cooperation between the U.S. and India has significantly increased in civil nuclear, civil space, and high-technology commerce. In December 2006, Congress passed the United States-India Peaceful Atomic Cooperation Act, which clears the way for India to buy U.S. nuclear reactors and fuel for civilian use. In

July 2007, The U.S. and India completed negotiations for peaceful nuclear cooperation that will open the door for U.S. and Indian firms to participate in each other's civil nuclear energy sector.

The primary missions of the Indian Navy are to defend India and its vital sea lanes of communication. India is an active member of the United Nations with a long tradition of participating in United Nations peacekeeping operations.

The government of India generally respects the rights of its citizens, but it has experienced major problems with extrajudicial killings of persons in custody, harsh prison conditions, lengthy pretrial detention without trial, disappearances, and torture and rape by police and security forces. Physical abuse and excessive force have been used to combat terrorism and suppress violent insurgencies operating primarily in the northeast part of the country. Human rights violations often go unpunished because of lack of accountability and endemic corruption in the government and police forces. A number of anti-Western terrorist groups are active in India. There have been terrorist attacks in public markets, public transportation, and places of worship, but U.S. citizens were not specifically targeted in those attacks.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

The SOR alleges Applicant’s mother-in-law is a citizen of Iran residing in India (¶ 1.a); his six sisters are citizens and residents of India (¶ 1.b); he receives a pension from the Indian Government for his service in the Indian Navy (¶ 1.c); he served in the Indian Navy from 1965 to 1991 (¶ 1.d); he has a bank account in India (¶ 1.e); and he traveled to India in January-February 1999, July 2000, November 2000, December 1000, and January 2005 (¶ 1.f). SOR ¶ 1.d has been amended to allege Navy service beginning in 1969 instead of 1965. The security concern under Guideline B is as follows:

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.

AG ¶ 6.

A disqualifying condition under this guideline may be raised by “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(a). Under the old guidelines in effect before September 1, 2006, a disqualifying condition arose merely from the existence of foreign contacts, without any analysis of the level of risk posed by those contacts. Under the new guidelines, a disqualifying condition does not arise unless a foreign contact creates a “heightened risk.” The term “heightened” is not defined in the guidelines, nor has it been addressed by the Appeal Board. I construe the term “heightened risk” to mean a risk greater than would exist absent the foreign contact. The fact that the risk is “heightened” does not mean it is unacceptable, but a “heightened risk” must be explained, extenuated, or mitigated. Applicant has no contacts with his former colleagues in the Indian Navy, but his foreign family contacts are sufficient to raise AG ¶ 7(a).

A disqualifying condition also may be raised by “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.” AG ¶ 7(b). Applicant’s connections to his sisters and in-laws in India are sufficient to raise this disqualifying condition.

A security concern may be raised if an applicant is “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion” AG ¶ 7(d). “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant has no contact with his brother-in-law and sister-in-law and no feeling of affection or obligation for his mother-in-law. To the contrary, he resents the pain his mother-in-law has inflicted on his wife. I conclude he has rebutted this presumption of affection or obligation toward his in-laws. However, Applicant’s wife still feels an obligation to occasionally check on her mother’s welfare, even though she is estranged from her family. Applicant and his wife felt an obligation to include his mother-in-law in their son’s wedding ceremony. Although the evidence of “heightened risk” is sparse, it is “more than a scintilla.” Considering all the evidence, I conclude there is a “heightened risk” that Applicant could be subjected to direct or indirect inducement, manipulation, pressure, or coercion. Accordingly, I conclude AG ¶ 7(d) is raised.

A security concern also may be raised by “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.” AG ¶ 7(e). Applicant regards his retired pay from the Indian Navy as an insignificant pittance, and the sole purpose of the bank account is to receive his retired pay. His two condominiums are worth about \$20,000, and he has tried to protect them from squatters and dispose of them for a reasonable price. He has held onto them for 20 years, because his frugal nature prevents him from selling them for less than their value. Although these properties represent a small part of his net wealth, the totality of his financial interests in India are sufficient to raise AG ¶ 7(e).

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the U.S.

None of Applicant’s siblings in India are connected to or dependent on the government of India. None of their spouses have any connection to the government, except for one brother-in-law who has construction contracts with the government. His

siblings in India and their families are not involved in high technology businesses that would lend themselves to being practitioners or targets of economic espionage.

India is a friendly country, a democracy, and a strategic and economic partner. While it has experienced human rights abuses, many of those abuses were due to an antiquated and inefficient legal system, a government campaign against terrorism and violent insurgencies, and an undisciplined and unsupervised law enforcement system. Although India has been identified as a practitioner of economic espionage, there is no evidence that it uses torture or abuse of its citizens to extract economic information. The U.S. and India have had serious disagreements in the past, and India's relationships with Iran have raised some concerns, but the relationship between the U.S. and India has evolved into a close economic, technological, and strategic partnership. Given its vibrant and close relationship with the U.S., it is unlikely India would risk damaging that relationship by abusing its own citizens to coerce a U.S. citizen to betray his country. I conclude AG ¶ 8(a) is established.

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." Directive ¶ E2.A2.1.3.1. The Appeal Board consistently applied this mitigating condition narrowly, holding that an applicant should not be placed in a position where he or she is forced to make a choice between the interests of the family member and the interests of the U.S. See ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006); ISCR Case No. 03-24933 at 6 (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005); ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant "can be expected to resolve any conflict of interest in favor of the U.S. interest."

Applicant's sense of loyalty or obligation to his in-laws in India is "minimal," but it is not with respect to his sisters and their children. He retains some ties to his sisters, and his culture and heritage, but his family ties were seriously weakened by his family's disapproval of his marriage. On the other hand, his loyalties and relationships in the U.S. are very strong. Two siblings are U.S. citizens, two sisters in India hold U.S. green cards, and one aspires to obtain U.S. citizenship. Applicant is deeply involved in his community and his work. He has gained the respect and confidence of retired senior military officers. By hard work and determination, he has built a successful company in the U.S. He expressed great affection for the U.S. and its values during his testimony at the hearing. I am satisfied that, in the unlikely event a conflict of interest should arrive,

Applicant would resolve the conflict in favor of the U.S. I conclude AG ¶ 8(b) is established.

Security concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). This mitigating condition is established for Applicant’s in-laws, but not for his sisters living in India.

Finally, where foreign financial or property interests are involved, security concerns may be mitigated by showing that “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(f). Applicant regards his Navy retired pay as an insignificant pittance. He uses it for spending money when he travels to India. He receives no income from his condominiums and regards them as a burden, but he has not disposed of them. I conclude AG ¶ 8(f) is not established because of the potential conflict, but I am satisfied Applicant would resolve any conflict in favor of the U.S.

Applicant’s travel to India has no independent security significance, because it was solely to visit family members and to attempt to dispose of his property in India. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005).

Whole Person Concept

Under the whole person concept, an 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. An 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant spent the first part of his adult life in the Indian Navy, but came to the U.S. in search of a better life. By hard work and initiative, he appears to have achieved the American dream. He is financially secure, his children are well-educated and successful, his wife is happy, and he is highly respected by colleagues in his field. He loves the U.S. for its religious, economic, educational, and political freedom. He has two siblings who are U.S. citizens, another who aspires to follow her children to the U.S. and become a U.S. citizen, and another who holds a green card. While he has financial interests in India, those interests pale when compared to his financial interests in the U.S. Many years ago, he defied family, culture, and tradition to marry his wife. His ties to his sisters, nephews, and nieces in India are heavily outweighed by his strong ties to his family in the U.S. and his passionate attachment to the U.S. and its values. His testimony at the hearing was sincere, intense, and credible. He is talented and dedicated, and the interests of the U.S. would be advanced by using his talent and dedication.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Guideline B (Foreign Influence):	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge