



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



In the matter of: )  
)  
) ISCR Case No. 14-04652  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

02/17/2016

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline B (foreign influence). Eligibility for access to classified information is granted.

**Statement of the Case**

On February 3, 2015, the Defense of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On June 18, 2015, Applicant answered the SOR and requested an administrative decision in lieu of a hearing. Department Counsel requested a hearing on August 6, 2015. The case was assigned to me on August 31, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 3, 2015, and the hearing was convened as scheduled on September 22, 2015. At that hearing, Department Counsel offered Government's Exhibits (GE) 1 and 2 that were admitted

into evidence without objection. Department Counsel also requested that administrative notice be taken of facts concerning India. The administrative notice request was marked as Hearing Exhibit (HE) I. Applicant had no objection to the administrative notice request, and the request was granted. Applicant testified and offered Applicant's Exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 30, 2015.

### **Findings of Facts**

The SOR alleged that Applicant's father (SOR ¶ 1.a), stepmother (SOR ¶ 1.b), father-in-law (SOR ¶ 1.c), brother (SOR ¶ 1.d), and sister (SOR ¶ 1.e) were residents and citizens of India. It also alleged that Applicant acquired a financial interest in a condominium being built in India through an initial investment of \$60,000 and an unspecified amount due upon its completion in July 2015 (SOR ¶ 1.b). In his Answer to the SOR, Applicant admitted each SOR allegation. His admissions are incorporated as findings of fact.

Applicant is a 41-year-old systems analyst who has been working for federal contractors since at least August 2006. He was born in India, earned a bachelor's degree from an Indian university in 1995, and earned a master's degree from a U.S. university in 2010. He immigrated to the United States in March 1999 and became a U.S. citizen in July 2009. In acquiring his U.S. citizenship, he renounced his Indian citizenship. This is the first time that he has applied for a security clearance. He has occupied a position of trust in the past.<sup>1</sup>

Applicant's wife was born in India. They married in India in March 2002. She became a U.S. citizen in October 2009. Applicant and his wife have two children, ages 7 and 10, who were both born in the United States. Their children speak only English.<sup>2</sup>

Applicant's mother passed away in 1995. His father and stepmother are residents and citizens of India. His father is a 64-year-old retired bank employee. He suffers from several chronic illnesses. His stepmother is about 60 years old and is a housewife. He talks to his father and stepmother on the telephone about once a month.<sup>3</sup>

Applicant's mother-in-law passed away in 2014. His father-in-law is a 71-year-old resident and citizen of India. He is a retired bank employee. When his mother-in-law was ill, his wife talked to her father on the telephone about once a month. Applicant would also talk to him during those calls. Since his mother-in-law's death, Applicant has talked less frequently to his father-in-law.<sup>4</sup>

---

<sup>1</sup> Tr. 5-6, 15-16, 28, 31-32, 35-40; GE 1, 2.

<sup>2</sup> Tr. 31; GE 1, 2.

<sup>3</sup> Tr. 28-29, 40; GE 1, 2.

<sup>4</sup> Tr. 40-42; GE 2; AE A.

Applicant's brother is a 38-year-old resident and citizen of India. He operates his own footwear business. He is married with two children. He is interested in living and retiring in the United States. In 2010, Applicant sponsored his brother for permanent resident status in the United States. He talks to his brother periodically when his brother is visiting their father.<sup>5</sup>

Applicant's sister is a 38-year-old resident and citizen of India. She is a housewife with two children. She is married to a dental surgeon and is attending dental school. Applicant periodically talks to his sister on the telephone.<sup>6</sup>

Applicant visited India in 2000, 2002, 2003, 2004, 2006, 2007, 2010, 2012, and 2014. He travels there to visit family. In 2015, Applicant invested in a condominium being built in India. The total price of the condo is \$60,000. He has already paid \$45,000 on that investment. The condo is scheduled to be completed in the summer of 2016. He intends to sell the condo for a profit upon its completion. He indicated that the proceeds from the sale will be brought back to the United States.<sup>7</sup>

Applicant's owns two homes in the United States. Each is valued at about \$350,000 with a mortgage. He has \$76,000 in one retirement account and \$98,000 in another. He has \$120,000 in a bank account. He estimated his net worth in the United States to be about \$700,000.<sup>8</sup>

India is a multiparty democracy that has a population of approximately 1.2 billion people. The United States and India share a number of strategic interests, including the fight against terrorism. In a 2000 Office of National Counterintelligence Center report, India was listed as one of the most active collectors of U.S. economic and proprietary information. A 2008 report cited cases of economic espionage that involved Indian entities. The U.S. Department of Justice has prosecuted defendants charged with illegally exporting controlled products to India. India has experienced terrorist attacks and insurgent activities. In November 2008, terrorists conducted coordinated attacks against targets in Mumbai that resulted in the killing of 183 people, including 165 civilians and 6 Americans. India's most significant human rights problems involve police and security forces abuses and corruption.<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

---

<sup>5</sup> Tr. 30, 38-39, 41; GE 2; AE A.

<sup>6</sup> Tr. 30; GE 2; AE A.

<sup>7</sup> Tr. 19-21, 30-31, 35-38, 36-38; GE 2; AE A.

<sup>8</sup> Tr. 32-34; AE A.

<sup>9</sup> HE I; AE A.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the foreign influence security concern:

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 ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Four are potentially applicable here:

(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 the 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 inducement, manipulation, pressure, or coercion; 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 of foreign influence or exploitation.

AG ¶¶ 7(a), 7(d), and 7(e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk of greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s contacts and interests in a foreign country as well as each individual contact or interest must be considered.

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.”<sup>10</sup>

---

<sup>10</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”<sup>11</sup> Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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 coercion from the government, terrorist organizations, or other groups.<sup>12</sup>

Applicant has close family ties in India. His father, stepmother, brother, sister, and father-in-law are citizens and residents of India. He also has a substantial financial interest in a condo in India. Because India was listed as a country actively engaged in the collection of U.S. economic and proprietary information and has human rights and terrorism concerns, Applicant’s close family members in India and his financial interest there create a heightened risk of foreign inducement, manipulation, pressure, or coercion. Those family contacts could also create a potential conflict of interest with his obligation to protect sensitive information. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. Four are potentially applicable in this case.

(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; and

(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

---

<sup>11</sup> ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002).

<sup>12</sup> See *generally*, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided.)

Applicant's contacts with his father and other relatives in India cannot be characterized as casual or infrequent. Even though none of Applicant's relatives in India work for governmental entities, the risk of intelligence collection, terrorism, or human rights abuses against his immediate family members could place Applicant in a position of having to choose between the interests of those family members and the interests of the United States, AG ¶¶ 8(a) and 8(c) do not apply.

Applicant came to the United States 17 years ago. He became a U.S. citizen in 2009 and has built a successful life in this country. His wife and children are U.S. citizens. His children speak only English. His professional future and the vast majority of his property interests, including two homes, are in the United States. Based on Applicant's deep and longstanding relationships and loyalties in the United States, he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(b) and 8(f) are applicable to Applicant's foreign contacts and interests.

### **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):

- (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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has developed deep roots in the United States. Whatever potential conflicts may arise from him having family members or financial interests in India are more than counterbalanced by his interests, responsibilities, and loyalties to the United States.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. Considering all the

evidence, I conclude Applicant has mitigated the security concerns arising under the foreign influence guideline.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph1, 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

---

James F. Duffy  
Administrative Judge