



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 15-02890

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2016

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on December 26, 2012. On October 27, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline B. DOD acted 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) implemented by the DOD on September 1, 2006.

Applicant received the SOR and timely requested a hearing before an administrative judge. The case was assigned to me on March 3, 2016. A notice of hearing was issued on April 8, 2016, scheduling the hearing for April 26, 2016. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection.

Applicant testified, and submitted Applicant Exhibits (AX) A through U, which were admitted without objection. DOHA received the transcript (Tr.) on May 4, 2016.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about India. The request and supporting documents are attached to the record as HX I. Applicant did not object to the documents. (Tr. 12) I allowed the documents into the record and took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In her answer to the SOR, Applicant denied the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. She provided additional information to support her case.

Applicant was born in India. She is 45 years old. She received her undergraduate degree in India. She came to the United States in 1996. She received her master's degree in 2006. (AX J) For about ten years she has worked with federal agencies for defense contractors, and has been with her current employer for about three years. (GX 1) She became a naturalized U.S. citizen in 2007. (GX 1) In 2007, she surrendered her Indian passport and renounced her Indian citizenship. (AX I) This is her first request for a security clearance, but she has held positions of trust. (Tr. 32)

Applicant is married and has two children. She and her husband were married in 1994. He is a naturalized U.S. citizen. Applicant's two daughters are U.S. citizens. They were born in the United States. Applicant has a visa card under the Overseas Citizens of India Program or the Person of Indian Origin Program (PIO). (AX T)

Applicant's father is a citizen and resident of India. He is 92 years old and is confined to his home due to his age and health. He lives alone. Applicant's mother died in 2007. Applicant contacts him twice per month to check on his health or wish him a Happy Birthday. She does not support him financially. He does not have any connection with the Indian government. He has been retired for about 35 years. (Tr. 18)

Applicant has three brothers who are citizens and residents of India. Her oldest brother is 68 and is retired. She speaks to him about three times a year. The conversations are short and they talk about their families. His children live in the United States. Her second brother is 56 and works for a private company in India. She speaks to him once or twice a year at holidays. The conversations are short, rarely lasting more than 15 minutes. The third brother is 53 and works in a technology division providing software services to the Indian government. However, he is a civilian and is not directed by the government. (Tr. 21) She speaks to him once or twice a year. None of her brothers are familiar with Applicant's job. Initially, when completing her 2012 security clearance application, she communicated with her brothers on a monthly basis.

However, that has changed, and their contact has been substantially reduced. She does not send nor receive any type of monetary support from her brothers.

Applicant has two sisters who are citizens and residents of India. She states they are now 66 and 62, respectively. They are housewives and work at home. They do not understand computers. (Tr. 21) Applicant speaks to them every four months for special occasions. They speak about their family members. Applicant does not support them financially. They do not know the nature of Applicant's work and have no connections to the Indian government. She now speaks to them less frequently since her mother's death. (Tr. 22)

Applicant's mother-in-law and father-in-law are citizens are citizens and residents of India. They are 75 and 80 years old, respectively. She talks to them once every three or four months. Her husband talks to them more frequently. (Tr. 22) They talk about family health issues. Applicant's in-laws are retired. She does not support them financially. Her mother-in-law does not speak English. They are not savvy with technology and do not know the nature of Applicant's work. (Tr. 23)

Applicant's nephew is a citizen and resident of India. He is the son of a sister. He is just a few years younger than she is. She and her daughter see him when they visit India. She speaks to him about two or three times a year. They converse about their children and school activities. (Tr. 23) He has no connection to the Indian government. She does not provide him with any monetary support. Applicant has never expressed to him anything related to her work. (Tr. 24)

Applicant has a bank account in India with approximately \$5,000. She opened the account in 2007 or 2008. The account was used for local currency when she and her husband travelled to India. (Tr. 24) Applicant had no idea that it could be an issue. Once she received the SOR, she told the bank she wanted to close the account. She was informed that she has to be there physically to do so. It is a joint account with her husband and will be closed the next time she or her husband goes to India. (Tr. 25) (AX Q)

Applicant owns a property in India which is valued at about \$6,000. When her mother died, she was gifted this property from her mother. The land does not generate any income. Applicant has no emotional attachment to the land and she has no intention of using it in the future. The land in India is an insignificant part of holdings, given her assets in the United States. The process of selling land in India is time consuming and bureaucratic. Applicant has to go personally to India to give a power of attorney to her brothers or sisters. She has not yet disposed of it due to her time constraints in the United States with work. Also, at the time she did not understand the significance of a possible security concern. (Tr. 27) She intends to make the necessary arrangements to sell the property when she is next in India. Applicant's net worth in the United States is significantly greater as described below.

Applicant submitted seven letters of recommendation from employers, friends, colleagues, and neighbors. She is described as highly professional and trustworthy. She demonstrates the highest character. She has great knowledge and experience and produces high quality work. Applicant is involved with school and community activities. She is kind and courteous. A former employer, who has known her for nine years, describes Applicant as a person who has worked on sensitive projects and sensitive information. She is respectful of privacy, rules and restrictions. She possesses a great deal of integrity. (AX AA)

Applicant has received numerous awards, certificates, and letters of recognition over the years. (AX D, AX F) Her performance evaluations reveal she is a recognized leader with the software department. She has a stellar reputation with clients. (AX D) She received a Certificate of Community Service from a charitable foundation for 2013 for the many services she has provided to the community. (AX H)

As to the Indian Identification Card issued in 2007, Applicant believed it was a long term visa. It allowed her to travel to India easier. She used it in 2013 when her father became ill. She cancelled her Indian passport in 2007 after achieving her U.S. citizenship. She does not have dual citizenship. She always uses her U.S. passport when traveling. (AX R)

The SOR alleged a security concern because Applicant admits that she has an PIO card. She was credible explaining that the card is nothing more than a visitor visa with no expiration date and no limitations on how frequently she can travel to India. Given her father's current health condition, and the number of times Applicant has had to visit India when her mother was ill before dying, the regular tourist visa would not have been a suitable option as it does not permit frequent visits to India. The identity card is a copy of her Indian visa that is stamped on her U.S. passport. Applicant travels on her U.S. passport and she surrendered her Indian passport in 2007.

Applicant and her husband own a home in the United States. (AX M) Her net worth is approximately \$1.2 million. (AX N), (AX O) They have savings and retirement accounts in the United States. (AX K, AX L) This is in stark contrast to the bank account and land in India.

Applicant explained at the hearing that she came to the United States in 1996 to work and complete her education. As soon as she and her husband were eligible, they became U.S. citizens and embraced their U.S. citizenship. They started a family and have two adult daughters. Applicant is proud of her career in the United States. She has received recommendations from her employers and her clients over the years. She is a dedicated, hardworking American. She plans to live the rest of her life in the United States, and raise and educate her children in the United States. She has roots in the United States both professionally and personally. Her husband and children are with her in the United States. She feels blessed to be in the United States and has been a productive part of the society. She has never had any legal difficulties. She is fiscally responsible. She values integrity, honesty, and courage. She has been a good daughter

to her parents, a good mother to her daughters, a good wife to her husband and a good neighbor in her community. She knows that her family in India also love the United States and would not cause anything that would harm the interests of the United States. Applicant has worked her adult life in the United States and has deep and long-term relationships. She has provided service to the U.S. Government through her work with government contractors. Applicant was credible when she explained that, in the unlikely situation that there would be pressure on her or her family, she would immediately contact her facility security officer. She noted that she has had extensive training in security measures.

Administrative Notice

India is a multiparty, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. Its political history since it gained independence from Great Britain in 1947 has included several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups in different parts of the country. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. Starting this year, it is a non-permanent member of the Security Council, and it seeks a permanent seat on the Security Council.

The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. Nevertheless, the United States recognizes that India is important to U.S. strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law. Since 2002, the United States and India have held a series of substantive combined exercises involving all military services.

The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean.

The United States and India share a common interest in fighting terrorism and in creating a strategically stable Asia. They are seeking to foster bilateral relations by establishing working groups to address (1) strategic cooperation; (2) energy and climate change; (3) education and development; (4) economics, trade, and agriculture; and (5) science and technology, health, and innovation.

In the past, India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and

industrial espionage directed at the United States. The United States has longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian Government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. Abuses by police and security forces have occurred primarily in criminal investigations and efforts to suppress separatist and terrorist groups. There is no evidence that India uses torture or abuse against its citizens to extract economic intelligence.

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “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 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 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).

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

Guideline B, Foreign Influence

The security concern under this guideline 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.

Four disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition 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). Second, a disqualifying condition 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). Third, 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). Fourth, a security concern may be raised if “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).

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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). 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 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 United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *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 has lived and worked in the United States since 1996. She is a naturalized U.S. citizen. Applicant’s husband and children reside in the United States. Her daughters are U.S. citizens and her husband is a U.S. citizen.

Applicant’s father, three brothers, two sisters, a nephew, mother-in-law and a father-in-law are citizens and residents of India. “[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 ties of affection to family members who are citizen-residents of India. Her contact with her father, brothers, sisters, nephew, and in-laws ranges from monthly to yearly. Applicant has not rebutted this presumption.

After considering the totality of Applicant’s family ties to India as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant traveled to India to see her mother and father. She saw them when they visited the

United States. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (d) are raised. Because of Applicant's foreign national bank account in India and her property, I conclude that AG ¶ 7(e) is relevant.

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). India engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology from the United States. Applicant's father, brothers, sisters, nephew, and mother-in-law, and father-in-law are citizens and residents of India. For these reasons, I conclude that AG ¶ 8(a) is not fully 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). Applicant's ties to the United States weigh in her favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. She has worked with government contractors for many years. She chose to become a U.S. citizen, even though it resulted in her loss of her Indian citizenship. She and her husband have personal assets, including a home, in the United States worth more than \$1.2 million. Applicant and her husband surrendered their Indian passports and use their U.S. passports. I conclude that Applicant would resolve any conflict between the interests of the United States and her family in India in favor of the United States. Thus, I conclude that AG ¶ 8(b) is established.

The bank account Applicant maintains in India has a balance of \$5,000. She uses it for local currency when she travels to India. She intends to close the bank account and has begun the process. Her Indian property is valued at \$6,000, which is substantially less than the value of her U.S. assets. She inherited the property and has no emotional ties to it. Her U.S. funds are substantial and they far outweigh her financial interest in India. It is unlikely that the above matters could be used effectively to manipulate her. AG 8(f) applies.

Whole-Person

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 relevant 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) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under 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 is a naturalized U.S. citizen who has lived in the United States since 1996. She and her husband reside in the United States with their two daughters who are U.S. citizens. Her husband is a U.S. citizen. Applicant was articulate, candid, sincere, and credible at the hearing. She and her husband still have cultural, family, and emotional attachments to India, but they see the United States as the home for their family. Applicant has been successful in the defense contracting business for many years. Her current employer recommends her for her professionalism and integrity.

Applicant chose to leave her home and emigrate from India in search of career opportunities. She wanted to provide for her family in the United States. She has worked hard in the information technology field and has received praise for her work ethic and accomplishments. Applicant purchased a home and has significant assets in the United States.

Applicant's foreign contacts represented a security concern because of the potential for conflicts of interest and exploitation. However, Applicant's family has no connections with the Indian government. Her land and bank account in India are outweighed by her substantial U.S. financial interests. She is also beginning a process to rid herself of those assets.

India is a partner of the United States in the global war on terrorism. While terrorism and some domestic unrest exist within some areas of India, none of it appears to threaten the enclave in which Applicant's family and property are located. There is no evidence that any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. Applicant returned to India to visit her ill mother.

Regarding Applicant's life in the United States, she is an American citizen, with a stable family, social, and professional life. Her life is focused here. She is admired by her peers. She and her husband intend to continue their lives in the United States. There is no evidence indicating that she may be manipulated or induced to help a

foreign power or interest. She credibly stated she would report any attempts to influence her to her security officer. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

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 she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
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Subparagraphs 1.a-1.h:	For Applicant
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Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge