



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



In the matter of:)
)
-----) ISCR Case No. 15-07144
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., and
Tovah Minster, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.

10/31/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He met his burden to present sufficient evidence to explain and mitigate the foreign influence concern stemming from his family ties to and financial interests in India. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on January 28, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on May 22, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified

¹ Exhibit 1.

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence.

Applicant answered the SOR on July 18, 2016; he admitted the eight factual allegations made in the SOR; and his answer included an eight-page memorandum in explanation and supporting documents. He also requested a hearing before an administrative judge. The case was assigned to me December 7, 2016. The hearing took place as scheduled on February 24, 2017. The hearing transcript (Tr.) was received on March 3, 2017.

Findings of Fact

Applicant is a 49-year-old senior software engineer for a federal contractor. He is seeking a security clearance for the first time. He has worked for his current employer since 2010. He married in 1996, and they have a son who is attending grade school. He along with his spouse have lived at the same residence since 2003.

Applicant was born, raised, and educated in India. He was awarded a bachelor's degree in engineering electronics and communications from an Indian college of engineering in 1990. Wanting to pursue higher education in the United States, he applied for and was accepted into a master's program. He immigrated via a student visa to the United States in 1991 when he was 22 years old. He was awarded a master's degree in computer science in 1993. In addition to his studies, he worked as a teaching assistant in the university's physics department.

After completing his master's degree, Applicant accepted his first job as a consultant for a major technology company. He has worked as a senior software engineer for various firms since at least 2001. His employment history includes working with proprietary information, he understands his obligation to protect such information, and he receives regular training from his company concerning handling both classified and proprietary information.² He has never been employed by the Indian government, and he has never worked for an Indian-based business.

Applicant became a naturalized U.S. citizen in 2004. His current U.S. passport was issued to him in 2014. He is no longer a citizen of India and he no longer possesses a valid Indian passport, although he does have an Overseas Citizen of India Card, which is not a form of dual citizenship. His wife is also a native of India as well as a naturalized U.S. citizen. Upon her arrival in the United States, she spent a couple of years attending a community college to refresh her skills in computer science. She then worked as a software analyst for about five years. Their son, a native-born U.S. citizen, was born in 2007. His spouse is now a full-time mother and housewife.

Like most first-generation immigrants, Applicant has family members who are citizens of and residents in his country of birth. His father and mother, ages 77 and 68,

² Tr. 67-68.

respectively, are both retired and dealing with chronic illnesses.³ His father is a retired police officer who was employed by a state while his mother has always been a housewife. They support themselves via his father's pension and an income-generating property. They reside in the same home in which Applicant was raised; they live on the bottom floor of the home; and his two brothers live on the top floors of the home. Applicant speaks with his parents weekly.

Applicant is the middle child of five children with two older sisters and two younger brothers. His two sisters are both married with children. They do not work outside the home; one brother-in-law is employed as an accountant; and the other brother-in-law is a farmer. His two brothers are also married with children. They are in business together in the field of private tutoring, assisting high school students in math and science. Applicant speaks with his siblings two to four times per year, usually during religious holidays, and he sees them when he travels to India. He has not mentioned his application for a security clearance to any of his family members living in India.

Based on his marriage, Applicant has a mother-in-law who is a citizen of and resident in India. She is a widow and is supported by a pension from her deceased husband who worked as a principal of a high school. She is also assisted by two daughters and their husbands who live nearby. One of the husbands works in manufacturing while the other husband is a businessman working in rental properties.

Applicant has made regular trips to India over the years to visit his family as well as for his wedding. In his application, he disclosed travel to India in 2008, 2009, 2010, 2011, 2012, 2013, and 2014. In addition, he and his wife and son travel regularly in the United States and national parks are a typical destination.

Applicant has a bank account in India. When he submitted his application, the account balance was about \$1,500, but now the balance is closed to zero.⁴ He opened the account in conjunction with purchasing residential real estate in India, which is described as a villa in the SOR. He also uses the account to obtain spending money during his visits to India. In addition to the bank account, Applicant owns about 10,000 shares of a small publicly-traded technology company on an Indian stock exchange with a current market value of about \$1,000. In other words, it's a penny stock. He bought the shares when the company was privately held (pre-IPO) to support a college classmate who founded the company.

Applicant and his wife bought the villa in 2011, which he describes as a two-level single family home with three bedrooms and two bathrooms measuring about 2,000 square feet. They bought the villa for his parents, thinking a house outside of a crowded city would improve their day-to-day living. His parents lived in the villa for about a year before returning to their home in the city where it is easier for them to obtain medical care. The villa is now used as a rental property managed by his brothers, and Applicant

³ Tr. 47-48.

⁴ Tr. 55.

receives no income from the property. His intention is to sell the villa and use the proceeds to pay for his son's college education, which is still several years away. In addition to the villa, Applicant owns a parcel of undeveloped land in India. He made the purchase of land in about 2005 as an investment which he may sell in the future.

The vast majority of Applicant's financial assets are in the United States.⁵ He estimates having a net worth of about \$1.2 million. Of that, about \$1 million (or 83%) is located in the United States and consists of financial or investment accounts, home equity, and personal property. His financial interests in India, as described above, have a combined value of about \$200,000. Although his financial interests in India are not minor, he stated that the loss of that money would not hurt him financially or otherwise.⁶

Applicant was businesslike, polite, and respectful during the hearing, and he answered questions in an open and honest way. He stated that after living and working here for the last 27 years, his loyalty to the United States is unquestionable and that his life, along with his wife and son, is in the United States.⁷ He regularly votes in U.S. elections, he has no intention of sending his son to school in India, and he intends to retire in the United States.⁸ I was favorably impressed by Applicant, and I had no concerns about his credibility or truthfulness.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.⁹

It is well-established law that no one has a right to a security clearance.¹⁰ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹¹ Under *Egan*, Executive Order 10865, and the Directive, any doubt

⁵ Exhibits B, B.1, B.2, B.3, B.4, and B.5.

⁶ Tr. 60.

⁷ Tr. 40-41.

⁸ Tr. 37, 43-44, and 60.

⁹ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹¹ 484 U.S. at 531.

about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹² An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁸ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁹

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's family ties to and financial interests in India disqualify him from access to classified information. Under Guideline B for foreign influence,²⁰ the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interest. The overall concern is:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

¹⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁰ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.²¹

There are three additional considerations in analyzing the evidence in this case. First, in the defense industry, foreign-born engineers and scientists play a critical role in developing and implementing new technology, and that technology may be of interest to others whose interests are contrary to the United States. Second, most foreign travel is for vacation, business, education, or to visit family, which is normal and not by itself a security concern. The significance of foreign travel depends upon the country involved and the nature of an applicant's contacts in that country. Third, foreign travel is also relevant when it is an indication of the strength of an applicant's family ties to that country.

Given the evidence of Applicant's family ties to and financial interests in India, I have considered the following disqualifying conditions under Guideline B as most pertinent:

AG ¶ 7(a) contact, regardless of method, 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) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

AG ¶ 7(f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business, that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Based on U.S. concerns about (1) economic and industrial espionage, (2) the risk of terrorism in India, and (3) human-rights problems in the country, India meets the heightened-risk standard in AG ¶ 7(a) and AG ¶ 7(f). This conclusion is based on the facts set forth in Department Counsel's written request for administrative notice.²²

²¹ AG ¶ 6.

²² Exhibit 2.

Applicant's family ties to and financial or property interests in India are sufficient to raise a concern under Guideline B. Applicant is a U.S. citizen living and working in the United States, but his parents, siblings, and extended family members are citizen-residents of India. It was apparent that he has feelings of affection or obligation or both toward those family member. Likewise, his financial or property interests in India cannot fairly be described as minor or trivial, as the total value is about \$200,000. In addition, his regular travel to India is indicative of the strength of his family ties to India. Taken together, these matters are sufficient to justify further review.

Given the evidence here, I have considered the following mitigating conditions under Guideline B as most pertinent:

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions of 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 United States;

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country, is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor or the U.S. interest; and

AG ¶ 8(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.

Applicant has all the signs of being a mature, responsible, and successful person. He has lived and worked in the United States since 1991 when he arrived here at age 22 to pursue a master's degree. He is now 49 years old, meaning he has spent that last 27 years, nearly all of his adulthood, living and working in the United States. His success extends to his financial affairs as shown by a net worth of about \$1.2 million, of which about 17% consists of the villa and undeveloped land in India. Those holdings are not unusual and are rather routine and do not present a conflict of interest. It is noted that he made both purchases several years ago before he knew he would be applying for a security clearance. Moreover, Applicant stated that the loss of his Indian properties would not hurt him financially or otherwise. Although he has a large family in India, he also has strong family ties to the United States consisting of his spouse and his son, who is a native-born U.S. citizen. His ties or contacts with his family in India are about what you would expect given his age, financial means, and family circumstances. There is nothing out of the ordinary about his family ties to India.

This process is not a zero-risk program, because nearly every applicant presents some risk or concern. Many security clearance cases come down to balancing that risk or concern. Here, Applicant has family ties to and financial or property interests in India. Such circumstances should not be dismissed or overlooked as fanciful or unrealistic, especially in light of the matters the United States views of concern in India. Nevertheless, on balance, I am satisfied that the strength of his ties to the United States outweigh and overcome his contacts and interests in India, a country that he left 27 years ago to pursue educational and employment opportunities in the United States. This is not a case of “divided allegiance” with an applicant who has one foot in each country. In contrary, Applicant appears to be a model immigrant in many ways. Viewing the record evidence as a whole, I am confident that Applicant can be expected to resolve any potential concern or potential conflict of interests in favor of the U.S. interest.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a-1.h:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge