



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



In the matter of:)
)
) ISCR Case No. 15-04339
)
Applicant for Security Clearance)

Appearances

For Government: Candace Garcia, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.

04/24/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s deep and longstanding relationships and loyalties in the United States, without his wife and father-in-law security concerns, outweigh his connections to his parents in India in the security analysis. Foreign influence security concerns under Guideline B are mitigated. Access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 9, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD), on December 6, 2015, issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).¹ Applicant answered the SOR on January 6, 2016, and requested a hearing before an administrative judge. The case was assigned to me on June 7, 2016. The Defense

¹ DOD acted under Executive Order (Exec. Ord.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 13, 2016, scheduling a hearing for July 28, 2016.

At the hearing, the Government offered three exhibits (GE 1 through 3). GE 3 is a request for administrative notice concerning the government of India. Applicant testified and submitted exhibits (AE) A through D. All exhibits were admitted into the record as evidence without objections, except for GE 3, which was admitted for the limited purpose of taking administrative notice. DOHA received the hearing transcript (Tr.) on August 5, 2016.

Procedural Ruling

Department Counsel requested I take administrative notice of facts concerning the government of India. (GE 3) There were no objections, and I took administrative notice as requested. The noted facts are incorporated in my findings of fact.

Findings of Fact

In his response, Applicant admitted the SOR allegations and submitted evidence in mitigation and extenuation. Applicant's admissions are incorporated into my findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 37-year-old lead associate engineer. He has worked for federal contractors since 2003. He received a secret clearance in 2004 that he has possessed to present. He is applying for a renewal and an upgrade of his clearance.

Applicant was born, raised, and educated in India. At age 12, in 1991, Applicant came to the United States with his parents and sister to visit his mother's siblings, who were U.S. residents and sponsored them into the United States. Applicant received a U.S. resident alien card during his visit. Applicant and his family returned to India after a period because his father could not find employment. Applicant returned to the United States every two years to renew his resident alien status.

Applicant completed high school in India. In 1997, he returned to the United States to attend college. He paid for his education working part time and with his father's support. He received a bachelor's degree from a U.S. university in 2002. He became a naturalized U.S. citizen in 2003. He stated that he surrendered his Indian passport to the Indian embassy and renounced his Indian citizenship that same year. A defense contractor hired Applicant in 2003. He started his master's degree studies at night while working full time. He received his master's degree in 2006, and was hired by another defense contractor. He has been working for his current employer and clearance sponsor since 2014.

Applicant's sister immigrated to the United States in 1999. She is a naturalized U.S. citizen residing in the United States. His parents are citizens and residents of India. His mother is 62, and she always worked as a homemaker. His father is 65, and he is a

retired engineer. He worked for a state company in India – a joint venture between the state government and private industry. (GE 1, GE 2) At his hearing, Applicant contradicted statements he made during his 2005 interview and in his 2014 SCA answers, when he testified that his father's employer was not connected to a state government.

Applicant submitted his first SCA in 2004, wherein he disclosed his parents were citizens and residents of India. In a 2005 interview with a government investigator, he stated that he had telephonic contact with his parents weekly to monthly. Applicant travelled to India in 1999, 2002, 2008, 2011, and 2014. He visited his parents and had contact with foreign nationals with whom he is bound by friendship, loyalty, affection, and obligation. In his 2014 interview, Applicant stated that since 2003, he had provided \$1,500 a month in financial assistance to his parents. At his hearing, Applicant claimed his parents are self-sufficient and denied providing them with any financial support, except for monetary gifts in special occasions.

Applicant was granted a secret clearance in 2005, and has had access to classified information since then. There is no evidence to show any security issues or rules violations. Applicant averred he is completely committed to protecting any classified information entrusted to him from unauthorized disclosure. After he was granted a clearance in 2005, Applicant has attended yearly security training designed, in part, to increase his awareness of potential risks and treats of possible exploitation by a foreign government.

Applicant met his wife in an Internet chat room in 2007. At the time, she was a citizen of India residing in the United States pursuant to a work visa. Applicant married his wife in India in 2011, and sponsored her into the United States. She inherited a parcel of land in India that Applicant estimated has a value of \$10,000 to \$15,000. They bought a home in the United States in 2012. She became a U.S. resident alien in May 2012, and a naturalized U.S. citizen in June 2016. In his June 2017 answer to the SOR, Applicant indicated that he and his wife intended to live and retire in the United States.

Applicant's father-in-law has been an elected member of the legislative assembly of a state government in India since 1972. Applicant testified he does not have a close relationship or frequent contact with his father-in-law. He averred he has only spoken a total of 30 minutes to his father-in-law since he met his wife in 2007, and texted with him about seven times. At his hearing, Applicant claimed he separated from his wife in June 2016. Although living in the same residence, he claimed they were no longer living as a married couple. He claimed he had retained an attorney to draft a separation agreement, and that he was contemplating divorce in the near future.

Applicant considers himself a patriotic American with longstanding personal and professional relationships in the United States that go back 18 years. He believes that he has been completely assimilated into the American culture, values, and way of life. He estimated his assets to be about \$250,000 in personal and retirement savings invested in U.S. financial institutions; \$160,000 in home equity; and \$70,000 in personal property.

At his hearing, Applicant submitted five reference letters. His references included the president of his company, his facility security officer, several of his managers and supervisors, co-workers, and friends. The gist of their letters is that Applicant is an exemplary employee who makes important contributions to his employer. He is considered to be honest, reliable, positive, dedicated, diligent, conscientious, knowledgeable, professional, and trustworthy. (AE G) Their statements support approval of his security clearance. His performance evaluations indicate Applicant consistently exceeds expectations and is considered one of his company's top performers. (AE E)

I take administrative notice of the following facts concerning India and its relations with the United States:

India is a stable multiparty federal, democratic republic with a bicameral parliament and a population of about 1.21 billion. The Indian government generally respects the rights of its citizens. The country's May 2009 elections were considered free and fair, despite scattered instances of violence. India has a vibrant civil society, a free press, and a robust democratic political system. Notwithstanding, corruption in the government and police forces, caste-based discrimination, and domestic violence and other abuses against women and children persist, despite criminal penalties for violations and government efforts to implement programs designed to empower members of the lower castes. Police and security forces often act with impunity, and serious abuses have been reported in criminal investigations and efforts to suppress domestic terrorism. Separatist and terrorist groups remain active in areas of conflict, such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt.

Anti-Western terrorist groups, including Islamic extremist groups on the U.S. Government's list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. Incidents include bombings in February 2012 of an Israeli diplomatic vehicle in New Delhi, in September 2011 at New Delhi's High Court, and in July 2011 in crowded areas in Mumbai. Such threats to safety have led the U.S. State Department to advise U.S. citizens to practice good security when in India, and to avoid travel to areas of domestic conflict and to the India-Pakistan border.

India is a member of the United Nations with a non-permanent seat on the Security Council in 2011-2012, and it seeks a permanent seat on the Council. It has a long tradition of participating in U.N. peacekeeping operations, and has committed \$1.3 billion to Afghan reconstruction efforts. The United States welcomes India's role in Afghanistan while recognizing Pakistan's security interests in having a friendly western neighbor. Three full-scale wars and a constant state of military preparedness on both sides of the border have marked more than six decades of bitter rivalry between India and Pakistan. The United States strongly encourages an ongoing India-Pakistan peace initiative and remains concerned about the potential for conflict over Kashmiri sovereignty and "cross-border terrorism."

India continues to obtain the bulk of its imported military hardware from Russia, which had been India's major benefactor for the first four decades of its independence.

As of 2000, India was listed as one of many countries actively engaged in economic intelligence collection and industrial espionage directed at the United States. As of 2008, India was identified as one of seven countries involved in criminal espionage and in the illegal acquisition of U.S. export-restricted products. There had been several incidents of international businesses illegally exporting, or attempting to export, restricted, dual-use technology from the United States to India. There is no evidence that India then or now tortures or abuses its citizens to extract economic intelligence.

The United States has also had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. Differences between the United States and India still exist over India's nuclear weapons programs; the slow pace of India's economic reforms, bureaucracy, corruption, labor market rigidity, and regulatory and foreign investment controls. India's bilateral strategic partnership with Iran is also a concern. Between 2004 and 2006, the United States sanctioned Indian scientists and chemical companies for transferring nuclear weapons-related equipment and technology to Iran. India imported about \$10 billion worth of crude oil from Iran in 2009.

At the same time, the United States recognizes India as key to U.S. strategic interests. Since 2002, the United States and India have held combined exercises involving all military services. Both countries are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia.

The United States has been committed to establishing a strong, dynamic partnership with India. This is evidenced by the June 2005 ten-year defense pact (outlining planned collaboration in multilateral operations, expanded two-way defense trade, and increasing technology transfer opportunities); the July 2007 bilateral agreement for peaceful nuclear cooperation; the July 2009 "Strategic Dialogue" (calling for collaboration on energy, trade, education, and counterterrorism issues); and U.S. arms sales to India (In 2009, India signed a \$2.1 billion deal to purchase eight surveillance aircraft from a U.S. manufacturer.). The United States is India's largest investment partner. Foreign assistance was about \$3 billion in 2006-2007, with the United States providing about \$126 million in development assistance.

India does not permit its citizens to hold dual citizenship. In 2006, India launched the Overseas Citizens of India (OCI) program. It is not a dual-nationality program and does not grant Indian citizenship. A U.S. citizen who obtains an OCI card can travel to and from India indefinitely, work in India, study in India, and own property in India (except for certain agricultural and plantation properties). An OCI card holder is ineligible for an Indian passport or for Indian government employment and cannot vote in Indian elections.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Ord. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(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.

Applicant was born, raised, and educated in India, up to age 18. Applicant's parents and father-in-law are citizens and residents of India. His father-in-law has been an elected member of the legislative assembly of a state government in India since 1972.

Applicant visited his parents in India in 2008, 2011, and 2014. His parents visited Applicant in the United States in 2012 and 2015. Applicant provided \$1,500 monthly to his parents to supplement their finances from 2003 to at least 2014. At his hearing, he claimed that he no longer provides them with financial support.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection for his parents and wife. Through his wife, he also has ties of affection or obligation to her father in India.

Applicant's relationships with residents of India create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives, who live in India. For example, if intelligence agents or government officials in India wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in India. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

An applicant's possession of close family ties living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. 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 collection operations against the United States. The relationship of India with the United States, and India's "history of conducting economic and industrial espionage against the United States puts a heavy burden of proof on Applicant" to demonstrate that his relationships with family members living in India do not pose a security risk. See ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013). Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in India.

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).

There is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living in India. Nevertheless, it is not possible to rule out such a possibility in the future. Applicant's relationships with family members living in India create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in India by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts or relationships with family living in India, raising the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns including:

- (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; and

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant, directly or through his wife, has frequent contact with his parents and his father-in-law who are citizens and residents of India. Applicant has close contact with his parents. Concerning his wife, Applicant testified that although they were still living in the same house, they were separated and no longer living as a married couple. He testified that he had retained an attorney to help him prepare a separation agreement, and that he was considering a divorce.

Under normal circumstances, Applicant's (directly or through his wife) connections to family living in India, although positive character traits, could negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c). Considering the circumstance of this case, and that Applicant is severing the relationship with his wife and her father, he has met his burden of showing there is "little likelihood that [his relationships with family living in India] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in India.

There is no evidence that the Indian government or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information. While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' financial and diplomatic investment in India.

Applicant has significant connections to the United States and more limited connections to India. Taken together, his and his wife's connections to their family living in India are significant. His father-in-law's long-term position as an elected member of the legislative assembly of a state government in India raises security concerns. However, Applicant testified he was severing the relationship with his wife and that would eliminated the concerns about his father-in-law in India.

Applicant's deep and longstanding relationships and loyalties in the United States, without his wife and father-in-law concerns, outweigh his connections to his parents in India in the security analysis. Foreign influence security concerns under Guideline B are mitigated.

Whole-Person Concept

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

There are significant facts supporting a grant of Applicant's access to classified information. He entered the United States in 1991, at age 12, and obtained resident alien status before returning to India. He returned to the United States every two years to renew his status. In 1997, he immigrated to the United States, attended a U.S. university, and was awarded a bachelor's degree. He became a naturalized U.S. citizen in 2003. Applicant has successfully worked for defense contractors since 2003, and has possessed a secret clearance since 2005. There is no evidence of any issues of concern or security violations. Applicant curtailed his contact with his relatives and friends living in India to avoid any possible security concerns. He no longer maintains contact with his extended family and friends in India. Except for his parents, he denied having contact with foreign nationals with whom he is bound by friendship, loyalty, affection, and obligation.²

² See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.³ India has a history of industrial and economic espionage targeting U.S. economic, proprietary, and industrial secrets.

On balance, the weight of the evidence supports granting Applicant's access to classified information. Applicant's deep and longstanding relationships and loyalties in the United States, without his wife and father-in-law security concerns, outweigh his connections to his parents in India in the security analysis. Foreign influence security concerns under Guideline B are mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	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.

JUAN J. RIVERA
Administrative Judge

³ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).