



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



In the matter of: )  
 )  
----- ) ADP Case No. 15-00496  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Douglas Velvel and Tovah Minster, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

06/13/2016

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for a public trust position. He met his burden to present sufficient evidence to explain and mitigate the foreign influence concern stemming from his family ties to 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 March 29, 2012.<sup>1</sup> More than three years later on August 20, 2015, after reviewing the questionnaire and information gathered during a background investigation, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing trustworthiness concerns under Guideline B for foreign

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<sup>1</sup> Exhibit 1.

influence.<sup>2</sup> The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)<sup>3</sup> implemented by the DOD on September 1, 2006. Applicant replied to the SOR on September 3, 2015, and requested a hearing.

The case was assigned to me on October 28, 2015. The hearing was held as scheduled on January 5, 2016. The transcript of the hearing (Tr.) was received on January 13, 2016.

### **Procedural Matters**

Without objections, I granted requests from Department Counsel and Applicant to take administrative notice of facts concerning the country of India.<sup>4</sup> In addition, on my own motion, I took administrative notice of recent statements made by Defense Secretary Ash Carter concerning the defense partnership between the United States and India, a partnership rooted in shared ideals, mutual interests, and a spirit of innovation.<sup>5</sup>

### **Findings of Fact**

Applicant is a 46-year-old senior software developer and consultant for a federal contractor. He is seeking to obtain eligibility to occupy a position of public trust. Eligibility is necessary because his job involves access to sensitive but unclassified information, which includes personally identifiable information (PII). He has worked for his current employer since 2015.<sup>6</sup> He has a good employment record and highly favorable character references.<sup>7</sup> He married in 2003, and they have two children.<sup>8</sup>

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>4</sup> Exhibits 2 and A.

<sup>5</sup> Appellate Exhibit I; 18–20.

<sup>6</sup> Exhibit I.

<sup>7</sup> Exhibits D, E, F, and K.

<sup>8</sup> Exhibit L.

Applicant was born, raised, and educated in India. He was awarded a bachelor's degree in engineering from an Indian institute of technology in 1992.<sup>9</sup> In addition, he earned a second bachelor's degree in industrial management in 1995. He immigrated to the United States in 2000. He then began a career working in the fields of software engineering, software development, applications development, and information technology.<sup>10</sup> In addition to his employment, he was a part-time graduate student during 2007–2010, and he earned an MBA with a concentration in corporate financial management.<sup>11</sup>

Applicant became a naturalized U.S. citizen in 2010.<sup>12</sup> His current U.S. passport was issued to him in 2010. He is no longer a citizen of India, and he does not possess a valid Indian passport, although he retained his cancelled Indian passport. His wife is also a native of India as well as a naturalized U.S. citizen. She is not employed outside the home. Both of their minor children are native-born U.S. citizens.

Applicant's mother passed away in 2014. (SOR ¶ 1.a) Formerly, she was a lifelong citizen of and resident in India. She was a full-time homemaker and not otherwise employed outside the home. His father is a citizen of and resident in India. (SOR ¶ 1.b) His father is retired and continues to live in the village in which Applicant was raised.

Applicant has three siblings who are citizens of and residents in India. (SOR ¶¶ 1.c, 1.d, and 1.e) His sister is married, not employed outside of the home, and her husband works as a farmer.<sup>13</sup> His two brothers both work in the general field of accounting.<sup>14</sup> One brother is employed as a tax commissioner for the federal or central government of India. The other brother is employed as an auditor for the federal or central government of India, but he is scheduled to retire this summer. Applicant did not have detailed knowledge about his brothers' employment.

Based on his marriage, Applicant has parents-in-law who are citizens of and residents in India. (SOR ¶¶ 1.f and 1.g) His father-in-law is now retired, but he was employed as a civil engineer for an Indian state government. His mother-in-law has not been employed outside the home.

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<sup>9</sup> Exhibit H.

<sup>10</sup> Exhibit 1.

<sup>11</sup> Exhibit G.

<sup>12</sup> Exhibit 1.

<sup>13</sup> Tr. 23–24.

<sup>14</sup> Tr. 42–44.

Applicant has made regular trips to India over the years to visit his family. In his questionnaire, he disclosed travel to India in 2006, 2008, 2010, and 2012.<sup>15</sup> His wife and children went with him on some of the trips. More recently, he traveled to India in 2014 to attend his mother's funeral, and he made a brief trip by himself in 2015 to attend the wedding of a niece.

Applicant has had a small bank account in India. (SOR ¶ 1.h) In his answer to the SOR, he explained that the account had a balance of less than \$1,000 USD as of September 2015, although the balance was as high as \$20,000.<sup>16</sup> He explained that the major portion of the account was used to pay for his mother's medical treatment and her funeral. He also explained that he spent some of the money when he was in India and used some of the money to assist his parents-in-law. At the hearing, he presented documentation showing that he closed the bank account in December 2015.<sup>17</sup>

Other than the bank account, Applicant has no business, financial, or property interests in India. He earns an annual salary of about \$150,000.<sup>18</sup> In 2005, he and his spouse bought a home for about \$400,000.<sup>19</sup> He has about \$120,000 in 401(k) accounts.<sup>20</sup> He has \$40,000 in a stock brokerage account.<sup>21</sup> And he has about \$60,000 in a checking account.<sup>22</sup>

Applicant was businesslike, polite, and respectful during the hearing, and he answered questions in an open and honest way. I was favorably impressed by Applicant, and I had no concerns about his credibility or truthfulness.

## Discussion

The gravamen of the SOR under Guideline B is whether Applicant's family ties to India disqualify him from eligibility for access to sensitive information. Under Guideline B for foreign influence,<sup>23</sup> the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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<sup>15</sup> Exhibit 1.

<sup>16</sup> Attachments I and II to Answer to SOR.

<sup>17</sup> Exhibit B.

<sup>18</sup> Tr. 44.

<sup>19</sup> Tr. 44–45.

<sup>20</sup> Tr. 45–46.

<sup>21</sup> Tr. 46.

<sup>22</sup> Tr. 46.

<sup>23</sup> AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

Foreign contacts and interests may be a [trustworthiness] 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.<sup>24</sup>

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.

The guideline contains several disqualifying conditions. Given the evidence of Applicant's family ties to India, I have considered the following disqualifying conditions:

AG ¶ 7(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

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 [sensitive] information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Based on U.S. concerns about (1) industrial and economic espionage, (2) the risk of terrorism in India, (3) India's relationships with Iran, Pakistan, and Russia, and (4) human-rights matters, India meets the heightened-risk standard in AG ¶ 7(a). This conclusion is based on the facts set forth in Department Counsel's administrative notice request.<sup>25</sup>

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<sup>24</sup> AG ¶ 6.

<sup>25</sup> Exhibit 2.

Applicant's family ties to India are sufficient to raise a concern. Applicant is a U.S. citizen living in the United States, but his elderly father and three siblings are citizen-residents of India. It was apparent that Applicant has ties of affection or obligation or both to his immediate family members in India. 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.

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

AG ¶ 8(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 United States; and

AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant is a successful software developer and engineer. He has lived, obtained higher education, and worked in the United States since 2000. Now that the Indian bank account is closed, which was never a significant or large financial asset to begin with, all of his financial assets are in the United States. He also has strong family ties to the United States consisting of his spouse and children, both of whom are native-born U.S. citizens. His ties or connections to his family in India are what you would expect given his age and family circumstances. There is nothing unusual or odd about his family ties to India.

This process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has family ties to India. Those circumstances should not be dismissed or overlooked as fanciful or unrealistic, especially considering the matters the United States views of concern in India. Nevertheless, on balance, I am satisfied that his ties to the United States outweigh and overcome his ties to India, a country he left in 2000 so he could immigrate to the United States. This is not a case of "divided loyalties" with an applicant who has one foot in each country. Indeed, 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 interest in favor of the U.S. interest.

Applicant met his burden to present sufficient evidence to explain and mitigate the foreign influence concern stemming from his family ties to India. I have no doubts

about his reliability, trustworthiness, and good judgment. 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 gave due consideration to the whole-person concept.<sup>26</sup> Accordingly, I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to sensitive information.

### **Formal Findings**

The formal findings on the SOR allegations are:

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|---------------------------|---------------|
| 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 interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard  
Administrative Judge

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<sup>26</sup> AG ¶ 2(a)(1)–(9).