

Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant, acting *pro se*, answered the SOR on July 12, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on September 19, 2007. Counsel for Applicant entered his appearance on October 1, 2007.

I convened a hearing on November 7, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Two government exhibits (Ex. 1-2) were admitted and Applicant testified. DOHA received the hearing transcript (Tr.) on November 16, 2007.

RULINGS ON PROCEDURE

On September 12, 2007, the government requested administrative notice be taken of several proposed facts concerning Nepal. The government relied on publications from the U.S. State Department: *Background Note: Nepal*, dated May 2007, *Country Reports on Human Rights Practices-2006*, dated March 6, 2007, *Consular Information Sheet: Nepal*, dated June 27, 2007, *Travel Warning: Nepal*, dated May 7, 2007, and *Country Reports on Terrorism*, Chapter 2, dated April 30, 2007. On October 5, 2007, I informed the parties that consistent with DOHA Appeal Board rulings stressing consideration of the most current political conditions in foreign countries (*see* ISCR Case No. 05-11292, Apr. 12, 2007), I intended to review for purposes of taking administrative notice an updated travel warning on Nepal issued by the State Department on September 24, 2007. No objections were filed to the request for administrative notice or to my consideration of the updated travel warning. After weighing the reliability of the source documentation, including the updated travel warning, and assessing the relevancy and materiality of the facts proposed, I took administrative notice of certain facts pertinent to Nepal as set forth below.

FINDINGS OF FACT

DOHA alleged under Guideline B that Applicant's spouse is a Nepali citizen residing in the U.S. (SOR ¶ 1.a), her parents are resident citizens of Nepal (SOR ¶ 1.b), her father was employed in the U.S. from about 1998 to about 2001 after having worked in the Republic of India Embassy in Nepal prior to that (SOR ¶ 1.c), and that Applicant traveled to Nepal in 1992, 1997, and 2005 (SOR ¶ 1.d). Applicant admitted the allegations, explaining that her spouse has been in the U.S. for almost 33 years and that her spouse and his immediate family members do not intend to return to Nepal permanently. Her parents, who had permanent residency in the U.S. from 1998 to 2003 and are retired, returned to Nepal as they had difficulty assimilating in the U.S. Applicant added that her travel to Nepal was to visit her parents and extended family in Nepal when she was a student or employed in the private sector.

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, exhibits, and transcript, and having agreed to take administrative notice of certain facts, I make the following additional findings of fact.

Applicant is a 41-year-old senior software engineer who has been employed by a defense contractor since August 2005. She held an interim secret-level security clearance without adverse incident.

Applicant was born in Nepal in November 1966. She was raised in Nepal along with her brother, who is three years younger. Their mother worked as a public high school science teacher until she retired. Their father was employed by the Indian Embassy as an auditor in its pension department in Nepal until about 1986 when he quit after it was legally determined that Nepali employees at the embassy were not entitled to pensions from the Indian government. Their father then went to work in the private sector as a travel agent and then as a human resources representative at a casino before he retired.

Applicant came to the U.S. in 1989 for her marriage to a Nepali citizen who had become a U.S. permanent resident in about February 1975. Theirs was an arranged marriage in accord with tradition. He was employed as an automotive technician. Applicant and her spouse have two teenage daughters who were born in the U.S. in January 1991 and May 1994. In 1992, Applicant took her first daughter to visit her parents in Nepal. They stayed two months. While in Nepal, Applicant also visited with extended family members, including her parents' siblings.

From May 1990 to May 1994, Applicant pursued her associate's degree at a community college. She continued on at a public university and earned her bachelor of science degree in May 1998.

In 1997, Applicant's brother came to the U.S. for college. As of August 2005, her brother was in the U.S. on an H1 (temporary employment) visa. His employer, a computer company, has sponsored him for permanent residency.

Applicant traveled with both daughters to Nepal to see her parents in 1997. They stayed three months. She again visited with extended family members on that trip, including her father's half-brother and his family. In July 1998, Applicant began working as a software engineer for a computer firm in the U.S. She stayed on with the company through acquisitions until she was laid off in November 2004.

Applicant became a naturalized U.S. citizen in mid-October 1999, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. She acquired U.S. citizenship because of the greater opportunities open to her than if she was a lawful permanent resident and because she wanted to sponsor her parents' immigration to the U.S. Applicant assumes she is no longer a Nepali citizen since Nepal does not allow dual citizenship, but she has not taken any action to confirm it ("I don't even care because I didn't bother to renew, I don't even know where my [Nepali] passport is." Tr. 64). On April 16, 2001, she was issued a U.S. passport. Her spouse has not applied for U.S. citizenship.

Under Applicant's sponsorship, Applicant's parents became lawful permanent residents in about 1999. They came to the U.S. and alternated living with Applicant and with her brother for the next two years. Applicant's mother did not work when she was in the U.S. Applicant's father was employed part-time for a local discount retailer as he did not want to be solely dependent on

Applicant or her brother for support. They returned to Nepal for the less hectic lifestyle and because of the difficulties learning a new language, culture, and lifestyle.

In May 2002, Applicant started taking classes toward her master's degree in computer science while working for the computer company. In 2002, Applicant's parents returned to the U.S. to again attempt to assimilate but stayed only about a year. Applicant learned during their stay that her father's half-brother was the chief district officer (mayor) for a municipality in Nepal.

In November 2004, Applicant was laid off from her position with the computer company. While undertaking a job search, she took advantage of her unemployed status by traveling to Nepal on her U.S. passport to see her parents. During her six-week stay in March/April 2005, she visited with relatives, including a short visit of no more than a few hours with her father's half-brother at his home. Otherwise, she spent her time quietly at her parents' home, socializing with her parents and reading books.

On her return from Nepal, Applicant worked in a local sandwich shop for a couple of months to pay the bills. In August 2005, she started her present job. She was informed that she would have to apply for a security clearance, and she completed an electronic questionnaire for investigations processing (e-QIP Attachment) on August 2, 2005. Applicant disclosed the Nepali citizenship of several family members (spouse, brother and his wife, parents, and mother-in-law), and the Nepali residency of her parents. She indicated that her father-in-law had become a naturalized U.S. citizen, and her mother-in-law had her "green card." Her brother was in the U.S. on an H1 (temporary employment) visa and being sponsored for permanent residency by his employer while his spouse was in the U.S. on an H2 (also temporary employment) visa. Applicant also listed foreign travel to Nepal from March to April 2005 to see her parents, and to Canada with her immediate family for one week in July 2003. Applicant was granted an interim secret-level security clearance.

On March 24, 2006, Applicant was interviewed by a government investigator concerning her foreign relatives. Applicant indicated that her parents had lived in the U.S. from 1998 to 2001, alternating their time between her and her brother's residences. They had never applied for U.S. citizenship, although her father held a "green card" and worked briefly part-time for a discount retailer when he was in the U.S. Applicant added that one uncle in Nepal was a chief district officer for the government, but that she and her parents had "very infrequent and superficial" contact with him. (Ex. 2) Applicant related that her parents respect and support the policies of the U.S.

Applicant was reinterviewed on November 10, 2006, to discuss her parents' Nepali citizenship and her contacts with them. She reported that she telephones them two times per week, but added that neither of her parents had any government affiliation.

Applicant was asked by DOHA to authenticate the information previously provided her during subject interviews. In her response of June 1, 2007, Applicant indicated the information was accurate but added that her mother also held a "green card" while she was living in the U.S., and that her brother and his spouse had become U.S. permanent residents as of summer 2006.

Applicant's parents have been back in the U.S. since September 2007. They are staying with Applicant's brother and his wife but sometimes spend the weekends with Applicant and her family so they can spend time with their granddaughters. Applicant hopes they will decide to remain in the

U.S. They are here on a one year visa. When they were in Nepal, she telephoned them once or twice weekly. Her parents know she is a computer software engineer but are not aware of her employer. They are now retired, and are not politically active in Nepal. They own the home they have lived in since Applicant was born. They have complained to Applicant about inflation and the random violence in Nepal (“my mom says that if dad goes out for a walk, she is always, she doesn’t know whether he will come back or not because of the random violence that she mentioned.” Tr. 82).

As of November 2007, her father’s half-brother had lost his position as chief district official due to a change in government. Applicant does not know whether he is working for a governmental entity in Nepal, as her parents mentioned to her only that he had been ousted from his position. Applicant’s contact with this uncle is limited to brief visits when she is in Nepal and to brief conversations with him if he happens to be at his mother’s home when she calls her father’s stepmother during the festival of Dasai, which is similar to Christmas. None of Applicant’s relatives in Nepal has asked her about her work in the U.S., but some family members inquired if she could assist them in immigrating to the U.S. (“because life in Nepal is really hard and they wanted to make, they think it’s really easy here and dollars grow on trees, so they wanted to come here.” Tr. 66). Applicant has told them she is unable to help them.

Applicant’s brother works as a computer software engineer in the U.S. He and his spouse acquired lawful permanent residency in the U.S. in summer 2006. They are expecting their first child.

Applicant is registered to vote in the U.S. and she has voted in elections. She does not intend to return to Nepal to live. In the event of any improper contact or pressure placed on her parents, Applicant averred she would immediately report the contact to security personnel at work. She loves her job and does not want to jeopardize it or her family. She did not violate any regulations or procedures while she held the interim clearance. Applicant has no foreign financial assets or investments. She owns her home, has bank accounts, and has a 401(k) retirement plan through work. Her children attend local public schools. Applicant has little time for involvement in professional organizations, although she would like to join an organization of women in technology. She has two classes remaining to earn her master’s degree in computer science and plans to finish within a year. Nepali is primarily spoken in her home.

In 2006, Applicant’s spouse went to Nepal because he had not been there since 1989. He returned to Nepal in 2007 to sell property that his mother had given him. He brought the proceeds of the sale to the U.S. Applicant did not accompany him on either of these trips. As of November 2007, her spouse was a stay-at-home father and considering starting his own business. Applicant’s salary was sufficient to cover their living expenses. All members of her spouse’s immediate family reside in the U.S.

Nepal is an ethnically diverse country wedged between the People’s Republic of China and the Republic of India. Formerly governed by the monarch under a hierarchical system of councils (panchayats), Nepal was established as a parliamentary democracy under a constitutional monarch in November 1990. Due to dissension in the governing Nepali Congress Party, the parliament was dissolved in mid-1994. When elections produced no majority, Nepal became the world’s first communist monarchy. The next five years saw five successive unstable coalition governments. In February 1996, the Communist Maoist United People’s Front began a violent insurgency, waged

through killings, torture, bombings, kidnappings, extortion, and intimidation against civilians, police, and public officials. “Imperialist” U.S. and “expansionist” India were the targets of considerable Maoist venom. Cease fires in 2001 and 2003 were broken by the Maoists. In February 2005, the king dismissed the Cabinet, constituted a Council of Ministers under his own chairmanship, and suspended all fundamental rights for nearly three months. In April 2006, massive countrywide demonstrations organized by the major political parties in cooperation with the Maoists forced the king to relinquish power and to reinstate the 1999 parliament. In November 2006, the Maoists entered into a comprehensive peace agreement with the Nepalese government to end the decade long insurgency. On January 15, 2007, an interim parliament was constituted and an interim constitution endorsed. On April 1, 2007, the ruling eight-party government through political consensus formed an interim Council of Ministers that includes five Maoist ministers.

The interim constitution, which transferred all powers of king as head of state to the prime minister, expresses full commitment to democratic ideals and norms, including competitive multiparty democracy, civil liberties, fundamental human rights, adult enfranchisement, periodic elections, press freedom, an independent judiciary, and the rule of law. Incidents of human rights violations by government security forces, which had been numerous and grave before April 2006, declined substantially, while Maoists continued to engage in violence, extortion, abductions, and forced recruitment of schoolchildren. Sporadic incidents of terrorism and politically-motivated violence in major urban areas, including near-simultaneous blasts of improvised explosive devices at three locations in the capital Kathmandu on September 2, 2007, led the U.S. Department of State to warn U.S. citizens contemplating travel to Nepal. Ethnic tensions in the Terai region led to random, indiscriminate violent clashes between Maoist splinter groups and indigenous groups disrupting trade and travel in that area and to closures of the southern border with India. Maoist demonstrators have stopped and in some cases attacked diplomatic vehicles, including those of the U.S. Embassy. In November 2006, resident Americans reported being told they would have to house and feed Maoists intending to participate in rallies in Kathmandu, and in a few cases, their local Nepali staffs have been threatened or beaten when they attempted to resist this demand. Since early 2007, the Maoist Young Communist League has threatened the Kathmandu-based personnel of a U.S. non-governmental organization.

The U.S. has designated the Communist Party of Nepal (Maoist) as a global terrorist organization. Maoists are excluded from the U.S. and U.S. citizens are barred by law from contributing funds, goods, or services to, or for the benefit of, the Maoists. The Government of Nepal formally lifted its designation of the Maoists as a terrorist organization on May 3, 2006. As of 2007, the U.S. is the only country to maintain its designation of the Maoist insurgency as a terrorist organization.

Nepal is a member of the United Nations and of the World Trade Organization. Relations between the U.S. and Nepal have always been friendly. Since 1951, the U.S. has provided more than \$791 million in bilateral economic assistance to Nepal. Nepal also receives substantial external assistance from India, the United Kingdom, Japan, Germany, and the Scandinavian countries. The Nepalese Army has contributed significantly to UN peacekeeping missions. The U.S. has given \$21.95 million in grant assistance to the Nepalese Army, and many Nepalese Army officers attend U.S. military schools, conferences, and seminars. Nepal has generally had good bilateral relations with China since 1956. Nepal has traditionally had close relations with India because of strong

cultural, religious, linguistic and economic ties. India and Nepal restored trade relations in 1990 after a break caused by India's concerns over Nepal's relationship with China.

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 occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President 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). An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It 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.

CONCLUSIONS

Guideline B—Foreign Influence

Under Guideline B, 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 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 to 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 ¶ 6) Applicant's spouse is a citizen of Nepal (SOR ¶ 1.a); her parents are resident citizens of Nepal (SOR ¶ 1.b). Although they have been in the U.S. since September 2007 due to the pending birth of their grandchild and are again considering immigrating to the U.S., they have not decided to remain permanently. Disqualifying condition (DC) ¶ 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*) applies.

In SOR ¶ 1.c, the government alleged concerns of potential foreign influence because of her father's employment in the U.S. from about 1998 to about 2001 and with India's embassy in Nepal

before 2001. The evidence shows that Applicant's father worked part-time at a local discount retailer for a brief period while he and his spouse were living in the U.S. as lawful permanent residents. He worked so as not to be completely dependent on Applicant and/or her brother. It is difficult to see where this part-time retail work in the U.S. generates any foreign influence concern. As for her father's former employment in Nepal for the Indian embassy, his duties distributing and auditing pension benefits for Nepalis that served in India's army appear to have been routine but they would have brought him into contact with foreign government employees. However, Applicant also testified, unchallenged by the government, that her father quit that job in about 1986. There is no evidence that he has any ongoing contact with any of his former coworkers or with anyone presently employed by a foreign government.

Applicant traveled to Nepal as alleged in 1992, 1997, and 2005 (SOR ¶ 1.d). Routine contacts with officials at the border do not raise the concerns contemplated within DC ¶ 7(j) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*). While she visited with extended family members, including the uncle who was a chief district officer, these visits were brief. Her primary contacts were with her parents, and her travel is relevant to the extent it confirms the closeness of her bonds with them.

The risk presented by the Nepali citizenship of Applicant's spouse is mitigated by his lawful permanent residency in the U.S., and his limited contacts with Nepal. His immediate family members all reside in the U.S. While he traveled to Nepal twice in recent years, Applicant testified credibly that her spouse went to Nepal in 2006 because he had not been to his native Nepal for some 17 years and he returned in 2007 to sell property that his mother had given him in Nepal. There is no evidence that he has any ongoing contact with any persons in Nepal. Mitigating condition ¶ 8(a) (*the nature of the relationships with the foreign persons, the country in which these persons are located, or the positions or activities of those persons in the 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.*) applies.

Applicant's bonds of affection with her parents are too strong to fall within the first prong of MC ¶ 8(a). When they are in Nepal, she telephones them once or twice weekly. The political situation in Nepal remains a relevant consideration, despite their visitor status in the U.S. since September 2007. Given their past difficulty acclimating to life in the U.S., there is no guarantee that they will not return to Nepal in or before September 2008 when their visas expire. Nepal has historically had good relations with the U.S. It is a member of the United Nations and of the World Trade Organization, and it has contributed forces to UN peacekeeping missions. Nepal also does not have a history of aggressively targeting U.S. economic or intelligence information, and there has been considerable improvement in human rights. However, following its decade-long insurgency, Maoists are now recognized by, and are part of, the government of Nepal. Sporadic incidents of terrorism and politically-motivated violence in major urban areas of Nepal led the U.S. Department of State in September 2007 to warn U.S. citizens contemplating travel to Nepal. Applicant's mother recently expressed to Applicant her concern over random violence in their home city of Kathmandu.

Applicant argues for a distinction between the risk to physical security that exists in an unstable environment, and the types of concern that rise to the level of compromising Applicant's ability to safeguard national security. Applicant's position makes sense only if terrorism is viewed

solely as a criminal activity. Terrorism is not limited to indiscriminate acts of violence intended to incite fear. It often has political aims, and where it is allowed to operate unchecked or is condoned one has to question the ability and/or willingness of a government to protect its citizens against interference, coercion, or other abuses. Under Guideline B, the risk of terrorism within a foreign country is a relevant consideration independent of whether the foreign country is known to target U.S. citizens to obtain protected information. There is nothing about her parents' activities when they are in Nepal that heightens the risk, but given her strong feelings of affection for her parents (she continues to urge them to stay in the U.S.) and the official recognition and involvement of the Maoists in Nepal, I am unable to conclude with a reasonable degree of certainty that Applicant is unlikely to be placed in a position of having to choose between her parents and the interests of the U.S.

The risk of undue foreign influence presented by Applicant's affections for her family members may yet be mitigated by countervailing strong ties in the U.S. (*See MC ¶ 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 U.S., that the individual can be expected to resolve any conflict of interest in the U.S.)*). The issue underlying MC ¶ 8(b) is whether Applicant can be counted on to do the right thing in the face of any undue foreign influence.

Since immigrating to the U.S. in 1989, Applicant has developed very significant ties to the U.S. that she is not likely to jeopardize (education, career, home ownership, citizenship). She chose to become a U.S. citizen with the understanding she would no longer be a citizen of Nepal, in part so that she could sponsor her parents' immigration to the U.S. While working full-time, she has pursued her master's degree in computer science so that she can take advantage of opportunities that are not available to her in Nepal. Her two daughters are both native U.S. citizens who count on Applicant, not only for parental guidance, but for financial support. Consistent with the whole person evaluation required under AG ¶ 2(a), it is noted that Applicant held an interim secret clearance and did not violate the government's trust. She testified credibly that in the event of any undue foreign influence, she would notify her employer's security office ("I know what I have to do. I love my job and I would do anything to protect my job, and this is my home, I don't want to hurt this." Tr. 61). Applicant's commitment to her life in the U.S. is evident. So while she does have close bonds to her parents who may return to their native Nepal, she can be expected to resolve any conflict of interest in favor of the U.S. interest. MC ¶ 8(b) applies.

FORMAL FINDINGS

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski
Administrative Judge