



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



In the matter of: )  
 )  
 ) ISCR Case No. 19-01184  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

12/03/2019

**Decision**

LYNCH, Noreen A., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on May 17, 2018. On May 1, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant received the SOR and timely requested a decision based on the written record in lieu of a hearing. The case was assigned to me on November 19, 2019. Department Counsel submitted a File of Relevant Material (FORM), dated August 16, 2019. Applicant received the FORM on August 28, 2019. Applicant did not submit a

response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about India. The request and supporting documents are attached to the record (Item 7). Applicant did not object to the documents. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. (Item 1) He provided no additional information to support his case. His admissions in his answer are incorporated in my findings of fact. (Item 3)

Applicant was born in India in 1951. He received his undergraduate degree and one graduate degree in India before coming to the United States in 1988. He was sponsored by his wife's brother. (Item 6) In 1995, he received his master's degree in the United States. He did not serve in the military in India. He has worked as a self-employed financial agent and a professor since 2007. He is being sponsored for a security clearance by a linguistic company. He became a naturalized U.S. citizen in July 1994. (Item 3) This is his first application for a security clearance. (Item 4)

Applicant married in India in 1980. His wife is also a native of India, but is now a naturalized U.S. citizen. He has two children who were born in India, but are now naturalized U.S. citizens. He and his family live in a home that he purchased in 1996. (Item 4) The value of the house is about \$350,000. Applicant has savings accounts and a retirement account. (Item 6)

Applicant maintains a bank account in India with about USD \$45,000. (SOR 1.d) He used this money to maintain inherited property in India. At times, he also provides financial assistance to his nephews and nieces, citizens and residents of India. (Items 3-6)

When Applicant's parents died in 1987, he inherited land which is usable farmland and worth approximately USD \$250,000. (Item 5) The land is maintained by Applicant's brothers. (SOR 1.e) He stated that he is thinking of selling the properties in the future, but it is difficult to live in the United States and sell property in a country where he has renounced his birth citizenship. He will enlist the help of his brothers to sell the property at some time.

In 2009, Applicant and his family were issued Overseas Citizen of India travel cards which allows individuals of Indian origin to travel to and within India. Applicant

disclosed on his 2018 SCA that had traveled to India to visit friends and family members five times between 2011 and 2016. (Item 4)

Applicant has two brothers who are citizens and residents of India. (SOR 1.a) (Item 3) He communicates with his brothers but states that the contacts are casual and infrequent. One of his brothers retired from the Indian Air Force. Applicant is in weekly contact with him and has provided him with approximately \$20,000 in financial support.

Applicant has a middle brother who is a dual citizen of the United States and India. His brother resides in India. (SOR 1.b) He states that he has a relationship with him that would not put him in a position of having to choose between his patriotism for the United States and his brother. Applicant states that he does not influence or control what his brother does or the decisions in his life. (Item 3)

Applicant has two sisters who are citizens and residents of India. (SOR 1.c) He is in contact with them on a weekly to monthly basis. (Items 4, 5). One sister is a housewife and Applicant has provided her with about \$20,000 financially. His other sister is a retired college teacher. (Item 5)

Applicant states that his loyalty to the United States is such that he would not be subject to foreign influence or pressure from India. He and his wife and children are naturalized U.S. citizens. He has been in the United States for many years. None of his brothers or sisters have asked him about his work. His family is not associated with any terrorist organizations or military groups. He was candid in that he stated that he has affection for India because that is where his siblings live. (Item 6) He was also candid when he noted that there is always a security risk due to his family living in India, but he thinks he would be okay. (Item 6)

Applicant did not provide additional information concerning his financial status in the United States. He stated that he is loyal to the United States and has been here for almost 20 years. (Item 2)

### **Administrative Notice**

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

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

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

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

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

In the past, India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and industrial espionage directed at the United States. The United States has longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

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

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Four disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(b). Third, a security concern may be raised if an applicant is “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.” AG ¶ 7(e). Fourth, AG ¶ 7(f) may be at issue “if a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation” is present.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to

government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived in the United States since 1988. He is a naturalized U.S. citizen. Applicant is married and his wife and children reside in the United States. His wife and children are naturalized U.S. citizens.

Applicant's five siblings and other extended family live in India. One brother is a U.S. citizen, but resides in India. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members." ISCR Case No. 01-03120, (App. Bd. Feb. 20, 2002). Applicant acknowledges that he maintains regular contact with his family living in India. Applicant has not rebutted this presumption.

After considering the totality of Applicant's family ties to India as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant speaks to his sisters by phone once or twice a week and he visits frequently. He has had five visits to India from 2011 to 2018. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (e) are raised. Applicant owns farmable land in India worth about \$250,000, he has a bank account that is active in India and he has provided almost \$65,000 to various relatives in India. He may sell the property in the future. I conclude that AG ¶ 7(f) is at issue due to the financial and property interest in India.

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a). India engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology from the United States. Applicant's siblings and nieces and nephews are citizens and residents of India. He maintains close and regular contact with them. For these reasons, I conclude that AG¶¶ 8(a) and 8(c) do not apply.

Security concerns under this guideline can be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b). Applicant has held employment in the United States, but he has not held a security

clearance. He did not provide sufficient information on which to base an opinion on how he would resolve a conflict of interest. Thus, I conclude that AG ¶ 8(b) is not established.

As to Applicant's property and land in India, he does not want to abandon it now but might in the future. The value of both are about \$ 250,000. He also maintains about \$45,000 in an Indian bank account. Thus, I conclude that AG ¶ 8(f) does not apply due to the financial and property interests in India that could result in a conflict.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a naturalized U.S. citizen who has lived in the United States since 1988. He is married and his wife and two children are naturalized U.S. citizens. Applicant owns a house in the United States, but did not provide any additional information to supplement the record in this case.

Applicant's siblings are citizens and residents of India. He visits and maintains frequent contact with them. Over the years, he has given them sums of money and he acknowledged that he has nieces and nephews living in India. In addition, he has land, and a bank account in India. He has substantial foreign financial interests. He did not provide any evidence on which to refute or mitigate the concerns about foreign influence in this case.

India is a partner of the United States in the global war on terrorism. There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests



antithetical to the United States. Applicant returned to India on several occasions to see his family.

Applicant bears the burden in the case. He did not provide evidence indicating that he is exempt from manipulation to help a foreign power or interest. Applicant has not mitigated the security concerns. There is insufficient information to provide mitigation. In light of these facts and the country at issue, I find that Applicant has not successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch  
Administrative Judge