



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



In the matter of: )  
)  
) ISCR Case No. 19-01419  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: John Moon, Esq.

02/25/2020

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 24, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 24, 2019, and requested a hearing before an administrative judge. The case was assigned to me on October 7, 2019. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 25, 2019. I convened the hearing as scheduled on January 17, 2020. The Government offered exhibits (GE) 1 through 8. Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any of the exhibits offered, and they were admitted into evidence. The record was held open until February 7, 2020, to permit Applicant to provide additional exhibits. He did not provide any additional exhibits, and the record closed. DOHA received the hearing transcript on January 28, 2020.

### **Procedural Issues**

Department Counsel moved to amend the SOR (HE I; Tr. 10) by adding the following:

1.f: You are indebted to the State of [X] for a tax lien entered against you in December 2018 in the approximate amount of \$1,448.00. As of the date of the Statement of Reasons, the taxes remain unpaid.

1.g: You are indebted to [Bank Group] for a judgment entered against you in December 2011 in the approximate amount of \$450,633.

Applicant did not object to the Government's motion to amend. Applicant requested that the record be held open to permit the submission of additional exhibits. The Government's motion was granted. Applicant's request that the record be held open was also granted.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibit II, a written request that I take administrative notice of certain facts about India. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is India's significant involvement in economic and industrial espionage, numerous criminal cases concerning export enforcement, and threats of terrorism and insurgent activities that may affect U.S. citizens, as well as ongoing human rights problems.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶¶ 1.a and 1.c through 1.e, and 2.a. He denied the allegations in the SOR ¶¶ 1.b, 1.f, and 1.g. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 61 years old. He was born in India and immigrated to the United States in 1988. He married in India in 1989 and his wife immigrated the same year. He became a naturalized citizen in 2000. His wife is also a naturalized citizen, but the year is unknown. They have three children who were born in the United States and are ages 28, 27, and

19. They all live at home. Applicant has worked at his current job since May 2013. He is seeking employment with a government contractor and has been affiliated with them since November 2017. (Tr. 21-22, 90-92; GE 1)

Applicant testified that he worked for different employers from 1989 until approximately 2009 when he was laid off when the program he was responsible for was shut down. He testified that from 2009 to 2013 he worked as an on-call contractor, and his work was sporadic, and his income was significantly reduced. (Tr. 28, 57-58; GE 1)

Applicant explained that at the time he was laid off his wife was employed. They were able to pay their bills for a period, but decided to prioritize their children's college education. He had a mortgage on his home with the creditor in SOR ¶ 1.c. Applicant had purchased the house in 2001 and consistently made payments and additional payments toward the principal. Applicant testified that in 2009 or 2010, he obtained a home equity loan from the creditor in SOR ¶ 1.a. The exact amount is unknown. (SOR ¶ 1.a-\$157,805; AE A) He used the home equity loan to stay afloat during his financial hardship and paid his creditors, including credit cards, car loans, tuition, his son's student loans, and other expenses that were due. (Tr. 32-39, 58)

Subsequent to his unemployment, Applicant began to fall behind on his mortgage payments. Applicant told the government investigator during his December 2017 background investigation, that he attempted to refinance his mortgage, but after a period he told the mortgagee to foreclose on the property because the process had not been completed, and he planned to move to a new state for a job. He and his wife were both offered jobs and a relocation allowance. Regarding the home equity loan, he told the investigator that he paid \$300 a month on the loan until he lost his job. He said the creditor told him to wait until the foreclosure was resolved before addressing this debt. He told the investigator the home equity loan owed was resolved. He moved in March 2013. (Tr. 39-43; GE 2)

Applicant provided a copy of the Judgment for Foreclosure and Sale (Judgment) for his house filed in December 2014. It is unsigned. The total amount owed including all related fees and interest on the original mortgage was \$122,088. The Judgment notes that if the proceeds of the sale are not sufficient to satisfy those sums due the Plaintiff, the Court shall enter a deficiency judgment. Applicant testified that he does not know if the house was sold, and he has not received any notice of a deficiency judgment. Attached to the Judgment is an "Affidavit of Prove-Up." The plaintiff is the original mortgage company and the defendants include Applicant, his wife, and the creditor Applicant received his line-of-credit loan from (SOR ¶ 1.a) among others. The affidavit notes that the line-of-credit is a second mortgage on Applicant's house which was conveyed in 2007. The document further showed that the balance due and owed on that mortgage through March 2014 with fees and court costs was \$212,876. (Tr. 40-43; AE A)

Applicant did not provide evidence as to whether there was a deficiency balance on the first mortgage (SOR ¶ 1.c) and the current status or resolution of the second mortgage as alleged in SOR ¶ 1.a. The debt in SOR ¶ 1.a is unresolved.

The debt in SOR ¶ 1.b (\$10,564) is a credit card debt. Applicant testified that his credit card was fraudulently used, and he was a victim of identity theft. He stated he disputed the charges with the creditor, and it was resolved in May 2016. Applicant's November 2017 credit report shows the debt was charged off in March 2016. A judgment was entered for the creditor of this account in July 2016. Applicant did not provide any evidence of his dispute or that the debt was resolved. This debt is unresolved. (Tr. 79-81; GE 1, 2, 4, 8)

The debt in SOR ¶ 1.d (\$19,558) is a credit card debt. Applicant stated the debt belongs to his wife. His March 2017 credit report shows it belongs to him. He testified he paid it for a period and then it was charged off. He did not provide any documents to show he is not responsible for the debt or has taken action to resolve it. (Tr. 47-50, 81-83; GE 2, 4, 5)

The debt in SOR ¶ 1.e (\$5,784) is for a personal loan that Applicant cosigned for a friend. His friend made the required payments for a period and then stopped. Applicant made small payments for a period and then stopped. Applicant testified that the debt was charged off. He has not provided evidence that he has resolved the debt. (Tr. 47-51; GE 2, 4, 5).

Applicant testified that he was unaware of a tax lien entered against him from State X, where he previously lived and owned a house. The tax lien was entered in December 2018. (SOR ¶ 1.f; \$1,448) Applicant did not provide evidence of any attempt he may have made to contact State A, pay, or resolve the tax lien. (Tr. 83-89; GE 6)

The Government provided evidence of a judgment and lien for Bank Group entered against Applicant, his wife, and two other debtors in State X. It was filed in December 2011 in the amount of \$450,633. (SOR ¶ 1.g) Applicant testified that he invested \$150,000 in gas stations in 2008 or 2009. He said he was a board member of the corporation and a silent partner and not liable. No evidence was provided by Applicant to show he has resolved this judgment. (Tr. 62-76; GE 7)

Applicant was asked where he got the money to invest in gas stations. He stated that he inherited about \$450,000 from his father in about 2008 or 2009. He gave his brother \$300,000 because India would not let him transfer the entire amount from the country. During his background interview, he told the investigator that his investment in gas stations occurred in 1995 and the venture ended in 2003 or 2004. Applicant provided confusing and contradictory testimony. (Tr. 62-78; GE 2)

Applicant testified that in 2013, he inherited \$300,000. It is unknown if he received a second inheritance from his mother. He made several trips to India to dispose of her property during this period. He stated that he brought some of the money back to the United States and gave some to his two daughters, paid off his car loans, and paid other things. It is unknown whether the two amounts of \$450,000 and \$300,000 are the same inheritance and there is a discrepancy in the amount or if they are two separate amounts he inherited. (Tr. 62-78)

Applicant testified that he moved from State X in 2013. He purchased a house in the new state where he was employed. The purchase price was \$168,000, and he said it was “owner financed.” Having recently left State X and moved to a new state, it is unknown where Applicant got the money to purchase a house in the new state. He sold this house in 2015 and purchased another house for \$355,000. He currently has about \$17,000 in savings; \$35,000 in a 401k pension plan; and \$35,000 in stock market investments. His wife has about \$55,000 in her 401k pension plan and about \$35,000 in stock market investments. He and his wife both lease 2018 vehicles and have two other cars for their children. Applicant currently earns about \$80,000 annually, and his wife earns about \$85,000 annually. Applicant pays his younger son’s tuition, car note, and living expenses. His other children have 2015 vehicles that were paid for by Applicant. (Tr. 93-97)

Applicant’s parents are deceased. He has five brothers and four sisters. One sister passed away. One sister lives in the United States. Three of his brothers are citizens of the United States. The other two are citizens and residents of India. One is a retired chemist, and the other is a retired engineer. Both previously worked in private industry before retiring. All four of his sisters are residents and citizens of India. They all are married and homemakers. None of his siblings in India have ties to the government. Applicant visits his relatives in India regularly. Applicant does not have any financial ties to India. (Tr. 23-28, 54; GE 1, 3)

Applicant disclosed in his SCA and in his Counterintelligence Focused Security Screening Questionnaire (CFSSQ) that from August 2010 through September 2014, he traveled to the Philippines as a tourist or to visit family and friends ten times. The trips lasted from a few days to a month. He financed the trip himself and his family did not accompany him. From December 1989 to September 2016, he traveled to India to visit family and friends 13 times. He financed the trips himself and he took his wife, daughter and two sons with him twice. During one of these trips he and his family also visited Thailand. His last trip to India was in January 2019. Applicant traveled to Thailand in August 2012 by himself as a tourist. He traveled to the United Arab Emirates as a tourist in September 2016. Applicant testified that he travels to India once every three or four years, which is inconsistent with information he provided in his CFSSQ and SCA. He testified that his friend in the Philippines finances his trips there, which is inconsistent with his CFSSQ disclosures. (Tr. 55-62, 90; GE 1, 2, 3)

## **Policies**

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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

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

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

There is a significant threat of terrorism, ongoing human rights problems, and industrial espionage in India. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The disqualifying conditions in AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

Applicant has five brothers and three sisters. Three brothers are citizens and residents of the United States. Two brothers and three sisters are citizens and residents of India. He visits India regularly and presumably his family there. Applicant gave one brother \$300,000 of Applicant's inheritance. His contact is not casual or infrequent. AG ¶ 8(c) does not apply.

I considered the totality of Applicant's ties to India. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant's two brothers and three sisters are citizens and residents of India. Both brothers are retired and his sisters are homemakers. There is no evidence that they are involved in government activities or work for the government. Applicant's ties to the United States are more significant. He has been a naturalized citizen since 2000. His wife is also a naturalized citizen. His children were born and educated in the United States. Applicant has financial interests in the United States. Although, he frequently visits India, due to the nature of its government and his relatives' contact with it, the possibility that Applicant's family could be used to manipulate or coerce him is minimal. There is sufficient evidence to find that it is unlikely Applicant would be placed in a position of having to choose between the interests of his family and the interests of the United States. AG ¶ 8(a) applies.

Based on Applicant's deep and longstanding relationship and loyalty to the United States and his connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B. AG ¶ 8(b) applies.

#### **Guideline F: Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18: Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a



security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. (See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous unresolved delinquent debts and judgments. He is unable or unwilling to pay the accounts he owes. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has numerous unresolved delinquent debts and judgments beginning as early as 2011. He failed to provide evidence that he has taken action to pay or resolve any of the debts or judgments. AG ¶ 20(a) does not apply. He attributed his delinquent debts to a period of unemployment beginning in around 2009 or 2010 when he was laid off from his job. This was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant used a home equity loan to pay for his children's education, car loans, and other expenses. He failed to provide evidence that the home equity loan was paid or resolved through his home's foreclosure. During the period when Applicant said he was unemployed or unable to pay his debts, he made frequent trips to foreign countries that he paid for. It appears when Applicant moved to a new state, he abandoned his financial responsibilities in the state he left. He has a \$460,633 judgment from 2011 in State X that he has not addressed. He said he disputed certain debts that were charged off, but failed to provide evidence to substantiate his claim or actions to resolve the issues. Applicant has been employed since 2013 and continued to travel extensively, but not pay his delinquent debts or judgments. AG ¶ 20(b) minimally applies. AG ¶¶ 20(d) and 20(e) do not apply.

### **Whole-Person Concept**

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

- (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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant mitigated the security concerns raised by his siblings who are citizens and residents of India. He has not mitigated the financial considerations security concerns. Applicant has not provided evidence of any action he may have taken to address the delinquent debts and judgments alleged. It appears he had the financial

resources to travel extensively over the past years, but not resolve his delinquent debts and judgments. He moved in 2013 to a new state and has been employed since then. He provided insufficient evidence to substantiate his disputes that he is not responsible for many of his debts and judgments. He also failed to provide evidence of his intentions to satisfy and resolve them. Applicant did not meet his burden of persuasion and provide sufficient evidence in mitigation. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge