



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



In the matter of: )  
)  
) ISCR Case No. 19-02457  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

01/24/2020

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 3, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on October 19, 2019, and requested a hearing before an administrative judge. The case was assigned to me on December 9, 2019. The hearing was convened as scheduled on January 9, 2020.

**Evidence**

Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified, called four witnesses, and submitted 56 documents marked and admitted without objection as Applicant’s Exhibits (AE) A through O-2.

Department Counsel and Applicant requested that I take administrative notice of certain facts about India. Without objection, I have taken administrative notice of the facts contained in the requests. The facts are summarized in the written requests and documents and will not be repeated verbatim in this decision. Of particular note is that India is the world's largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have human rights problems; it has been victimized by terrorist attacks; and restricted, dual-use technology has been illegally exported to India.

### **Findings of Fact**

Applicant is a 58-year-old independent contractor and consultant. He is applying for a security clearance for the first time. He has a bachelor's degree from an Indian university and a master's degree from an American university. He is married with one child. (Transcript (Tr.) at 18-19, 22; Applicant's response to SOR; GE 1; AE A, B)

Applicant was born in India to Indian parents. His father is deceased. His mother and three of his siblings immigrated to the United States before Applicant. He followed them to the United States in 1997, and he became a U.S. citizen in 2003. India does not permit dual citizenship, and he renounced his Indian citizenship when he became a U.S. citizen. His wife is originally from India. She is now a U.S. citizen. Their child was born in the United States. (Tr. at 17-18, 22, 36, 49-50, 56; Applicant's response to SOR; GE 1)

Applicant's mother and three of his six siblings are U.S. citizens and residents. Two of his sisters lived in the United States and had permanent residence status (green card), but have moved back to India. One of his brothers and his mother-in-law are citizens and residents of India. His father-in-law is deceased. Applicant has a number of nieces and nephews who are citizens and residents of the United States, including two children of one of his sisters in India. His wife's brother and his family live in the United States. Applicant has had little to no contact with his brother in India in the last ten years. Applicant and his wife maintain contact with their other family in India through electronic media and visits. To the best of his knowledge, none of his immediate family members have any current direct connection to the Indian government. (Tr. at 20-21, 27-32, 38-48; Applicant's response to SOR; GE 1; AE N, O)

Applicant and his wife, separately or jointly, owned several properties in India, with an estimated total value of about \$232,000. They have since divested themselves of the properties. They have substantial assets in the United States, including their home, which they own without a mortgage, and three investment properties. He estimated their net worth to be between \$1.2 and \$1.5 million. (Tr. at 23-26, 39-40, 48-49; Applicant's response to SOR; GE 1; AE F-J, L)

Applicant has no plan to move back to India. His family has enjoyed great success in the United States. It includes doctors, lawyers, and engineers, with graduates from some of the most prestigious universities in the United States. His child is in a medical program at a top university. Applicant expressed his undivided allegiance

to the United States, which he considers his home. He credibly testified that his family in India could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so. (Tr. at 19-20, 32-34, 52-53; Applicant's response to SOR; GE 1; AE D)

Applicant is active in his community. Four witnesses testified on his behalf, and he submitted numerous documents and letters attesting to his civic involvement, patriotism, strong moral character, trustworthiness, honesty, dependability, work ethic, dedication, and integrity. (Applicant's response to SOR; AE C, D)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result 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 associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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;

(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 or technology;

(e) shared 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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant has family members, including three siblings and his mother-in-law, who are citizens and residents of India. India is the world's largest democracy, works closely with the United States on many matters, shares common strategic interests, and generally respects the rights of its citizens. But it also continues to have human rights problems; it has been victimized by terrorist attacks; and restricted, dual-use technology has been illegally exported to India. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), and 7(e) and have been raised by the evidence.

Applicant no longer owns any property in India. AG ¶ 7(f) is not applicable. SOR ¶¶ 1.d through 1.f are concluded for Applicant.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the 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.

I considered the totality of Applicant's ties to India. Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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 is a loyal U.S. citizen. He has many family members who live in the United States, but he still has some family in India. None of his immediate family members have any current direct connection to the Indian government. Applicant and his wife gave up their Indian citizenships when they became U.S. citizens. He has no plan to move back to India. He expressed his undivided allegiance to the United States, which he considers his home. He credibly testified that his family in India could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so.

I find that Applicant's ties to India are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, life, home, assets, and professional career are in the United States. I find that it is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of India. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

### **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 relevant 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 have incorporated my comments under Guideline B in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

### **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:

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| Paragraph 1, Guideline B: | For Applicant |
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| Subparagraphs 1.a-1.f: | For Applicant |
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### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge