



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



In the matter of: )  
)  
) ISCR Case No. 18-01740  
)  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

**08/04/2020**

---

**Decision**

---

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the Foreign Influence concerns created by his contacts and connections with family members in India. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

**History of Case**

On February 26, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 3, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). 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 for national security eligibility effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on October 29, 2018 (Answer). He admitted some of the SOR allegations, denied others with explanations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on May 28, 2019. DOHA issued a Notice of Hearing on October 16, 2019, setting the hearing for November 7, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through C into evidence. All exhibits were admitted without objection. I took administrative notice of the facts concerning India and Saudi Arabia that are set forth in bulleted paragraphs starting on page 2 of the Government's two Requests for Administrative Notice, which were marked Hearing Exhibits (HE) II and III for inclusion in the record. Hearing Exhibit I is the Government's Documentary Exhibits list. DOHA received the hearing transcript (Tr.) on November 20, 2019.

### **Findings of Fact**

Applicant is 51 years old. He has worked for a major aerospace company since 2007 as a manufacturing planner, and applied for a security clearance in order to qualify for work on defense contracts. He was born and lived in India until age 23. He entered the United States with a student visa in 1992, intending to remain and pursue a career in the aviation industry. He and his second wife married in 1999, and have three children, ages 22, 16, and 7. He has a 25-year-old daughter from his first marriage, with whom he has little contact. All four of Applicant's children were born in the United States. His first wife, who he married in 1994, was a naturalized U.S. citizen who was born in Pakistan. His second wife, who he married in 1999, was born in India and became a naturalized U.S. citizen in 2018. (GE 1; GE 2; AE A; AE B; AE C; Tr. 37-39, 50-51.)

Applicant testified that his father, who is deceased, worked for the Indian national government as "a joint director. He said his father "was highest position in India," and served as "the Director of Agriculture." (Tr. 57.) His father retired from that position with a pension, and his mother continues to receive spousal pension benefits from the Indian government. (Tr. 69.) From 2007 to 2012, Applicant's father and mother came to the United States to live with him and obtained permanent resident (green card) status. However, they preferred to live in India, and decided to move back. His mother is in her early eighties, and intends to remain there. She lives there with one of Applicant's brothers and one of his sisters. He speaks with her once or twice a week, and sends financial support for her to his brother, averaging less than \$500 per month on a semi-regular basis. Applicant's mother-in-law is also a citizen and resident of India. His father-in-law is deceased. (Answer; GE 1; Tr. 42-46, 51-53, 67-69.)

Applicant's six brothers and three sisters were all born in India. Three of his brothers and his three sisters still reside in their family's hometown there. Applicant testified that all but one of them, or their spouses, works in the private sector as doctors or engineers. One of the sisters is a homemaker who is not otherwise employed. Two of Applicant's younger brothers have moved to Canada and become citizens there. They also work as engineers. His youngest brother is a pharmacist who maintains his Indian citizenship but has lived and worked in Saudi Arabia for more than 15 years. Applicant

said that these three brothers, and possibly one of his sisters, have visa applications pending and hope to move to the United States in the near future. (Answer; GE 1; Tr. 34-35, 47-49, 66.)

Applicant owns no real estate in India, but owns five different homes in the United States, three of which he rents to tenants. One remains vacant because Applicant hopes that one of his brothers will immigrate and live there. He and one of his daughters have a joint bank account in India containing the equivalent of several thousand dollars, which he uses during his annual visits there. (Tr. 46, 49, 70-72.)

Neither party produced witness testimony or documentary evidence concerning Applicant's character, work performance, or record of compliance with procedures for protecting sensitive information. Applicant testified that he has two master's degrees and will soon complete his dissertation for a PhD degree. He is seeking a security clearance to become eligible to apply for a manufacturing planner position within his company that requires only an associate's degree and three years of related experience. (GE 1; GE 2; AE B; AE C; Tr. 38-40.)

I have taken administrative notice of facts concerning the states of India and Saudi Arabia, as set forth on pages 2 through 7 of HE II, and pages 2 through 4 of HE III, respectively. These facts are derived from and contained in U.S. Government publications referenced in those hearing exhibits, and include the following: India is among the most active foreign nations targeting U.S. aeronautical and other high-technology sectors for economic collection and industrial espionage. Numerous criminal cases during the past 12 years involved India-related espionage and illegal export of U.S. scientific information and technology. There are also significant concerns over ongoing terrorist and insurgent activities, government corruption, and human rights abuses. Saudi Arabia is a monarchy with numerous human rights issues and organized anti-American terrorist activities.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

According to AG ¶¶ 2(b) and 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 any doubt concerning personnel being considered for national security

eligibility 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. I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 requires that 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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, “Any determination under this order adverse to an applicant shall be a determination 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 concerns regarding foreign influence:

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.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying. Two of them 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 or technology.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has normal and commendable familial connections with his mother and his nine siblings. He maintains weekly contact with, and provides regular financial support to, his mother who lives in India with two of his siblings. Three of his brothers, three of his sisters, and his mother-in-law are also resident citizens of India. Many of them and their spouses hold responsible civilian positions as doctors or engineers. Applicant's father served in a high ministerial position for the Indian national government before retiring with a pension, part of which his mother still collects. These relationships create a heightened risk of foreign pressure, coercion, and exploitation because of his family's prominence and India's extensive economic collection and industrial espionage operations against sensitive and protected U.S. technology assets. Applicant's relationship with his relatives, and their positions in India, also create a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members living in India, should they be pressured, manipulated, or induced to obtain access to such information. The evidence is sufficient to raise these disqualifying conditions, shifting the burden to Applicant to prove mitigation.

Applicant's two brothers who live in Canada have become Canadian citizens, and have no intention to return to India. His brother who lives in Saudi Arabia is a pharmacist with no connection to either the Indian or Saudi governments. His relative obscurity and anonymity minimize the risk that his relationship to Applicant could be exploited or manipulated to the detriment of U.S. national security interests. All three of those brothers are awaiting final interviews needed for approval of visas to move to the United States. I find no security concerns arising from Applicant's familial relationships with these brothers, and any such concern would be fully mitigated under AG ¶ 8(a) below.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (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, or government and the interests of the United States;
- (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; 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 did not establish that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of his and his wife's longstanding and commendable relationships with their family members in India. Those connections create continuing and significant potential for conflict of interest and risk of coercion, exploitation, manipulation, or pressure. Applicant also has substantial connections to the United States, including his immediate family and ownership of several homes. On balance, however, the evidence currently demonstrates significant potential for conflict of interest. Accordingly, Applicant failed to establish sufficient mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of his commendable family relationships, his family's prominence in India, and that country's history of targeting U.S. aeronautical and other high-technology sectors for economic collection and industrial espionage. Applicant is a mature person, who has been a naturalized citizen since 2004. His wife and children are also U.S. citizens, who do not hold Indian citizenship. There is no evidence or allegation that he has ever taken any action that could cause potential harm to the United States. However, his ongoing concern for, and relationships with, his numerous family members who are citizens and residents of India, create significant and ongoing potential for pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant did not meet his burden to mitigate the foreign influence security concerns raised by the facts of this case. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, and 1.e:	For Applicant
Subparagraphs 1.b, 1.c, 1.f, and 1.g:	Against Applicant

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge