



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



In the matter of:)
)
) ISCR Case No. 20-02663
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

June 21, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline B (foreign influence concerns, but failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On July 15, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 10, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and B. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In an undated response, Applicant submitted his Answer to the SOR. On June 7, 2021, Department Counsel was ready to proceed.

On June 15, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. The same day, following consultation with Applicant, DOHA

issued a notice of hearing scheduling the hearing for July 1, 2021. The hearing commenced as scheduled. I admitted Government Exhibits (GE) 1 through 3 without objection. At the onset of the hearing, Applicant requested a continuance because he needed additional time to complete his tax returns, discussed *infra*. Without objection from Department Counsel, I continued the hearing to August 12, 2021. On July 16, 2021, DOHA received the transcript from the July 1, 2021 hearing (Tr. 1).

On July 1, 2021, DOHA issued a second notice of hearing; however, the second notice indicated the hearing would be scheduled by DCS on August 12, 2021. I convened the hearing as rescheduled. Applicant testified, did not offer any exhibits, and did not call any witnesses to testify on his behalf. I held the record open until August 20, 2021, to afford the Applicant an opportunity to submit additional evidence. He did not submit any post-hearing evidence. On August 23, 2021, DOHA received the hearing transcript from the August 12, 2021 hearing (Tr. 2).

Procedural and Evidential Rulings

Department Counsel requested that I take administrative notice of certain facts about India. Applicant did not object to the request, and it was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts are summarized in the written request and will not be repeated verbatim in this decision. (Tr. 1 at 10-11) HE I discussed various concerns vis-à-vis the United States and India to include that sensitive U.S. economic information and technology are targeted by intelligence services, private sectors, academic and research institutions, and citizens. Because the United States is a leader in the development of new technologies and a central player in global financial and trade networks, foreign attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to the U.S. economic security. See HE I for a more comprehensive discussion of concerns pertaining to India.

Findings of Fact

Background Information

Applicant is a 29-year-old experienced electrical design engineer, who has been employed by a defense contractor since August 2020. He seeks to obtain a secret security clearance to enhance his position within his company. (Tr. 1 at 9-10, 17; Tr. 2 at 21-22, GE 1)

Applicant graduated from high school in June 2010. He was awarded a bachelor of science degree in electrical engineering in December 2015. He is currently pursuing a master of science degree in computer engineering with an anticipated graduation date in 2023. (Tr. 1 at 17; Tr. 2 at 24-27; GE 1) Applicant has never married and has no dependents. (Tr. 2 at 28; GE 1)

Financial Considerations

The SOR lists one allegation under this concern as a result of Applicant failing to file Federal income tax returns for tax years 2016, 2017, and 2018. (SOR ¶ 1.a) This allegation, which he admitted, is established by his July 15, 2019 SF-86; his August 23, 2019 Office of Personnel Management Personal Subject Interview (OPM PSI); his December 15, 2020 Response to DOHA Interrogatories; and his undated SOR Answer. (GE 1 through 3; SOR Answer; Tr. 1 at 11)

SOR ¶ 1.a: In his SOR Answer, Applicant explained his failure to timely file his Federal income tax returns as follows:

During my employment at [previous employer] (Aug 2015 to Feb 2019), I elected for maximum allowances on my form W4 beginning in 2016. This was due to a misguided concept to allocate the otherwise withheld portion of my paycheck into a split between high interest yielding account and securities for the tax year term. The methodology was to accrue savings and investment interest on the earmarked money, then liquidate and pay back owed taxes to the IRS. This of course did not take into account penalties due to misrepresenting W4 allowances, risk from securities investment, taxed owed on short term capital gains, and of course the financial ethics of the situation. This pattern occurred from 2016 until the end of my employment with [previous employer] and partially into my employment with [current employer] (approximately May 2019). (SOR Answer)

Applicant further stated that after beginning his current employment that it became apparent to him that he needed to revise his withholdings strategy and resolve his income tax situation. He stated that he had retained the services of a certified public accountant (CPA) in February 2020; however, “after the onset of the pandemic, we had individually gotten distracted with personal affairs and lost touch with the process.” (SOR Answer) After Applicant began working for his current employer, he retained the services of another CPA and stated that he was collecting the necessary documentation to file his back tax returns: “My tax advisor and I are currently working on . . . all of my tax returns in order to bring me up to date with the IRS.” (SOR Answer) He concluded his Answer by stating that he would present tax filing documents at his DOHA hearing.

Applicant explained when his continued hearing reconvened that he had retained a CPA only a week before (in June 2021): He clarified that despite “the Tax Engagement Letter that I received from [the CPA], I have yet to actually retain them with. But that is where we’re at in the process right now.” (Tr. 1 at 9-14) At his August 12, 2021 hearing, when asked about the progress he made in filing his delinquent income tax returns, Applicant stated:

As far as my accounting firm is concerned, they are basically almost done with it. A partner that I’ve been working with, their work is being reviewed by another partner and the documents should be coming to me by this

Friday. That's the update I received earlier. I had a look at the tax returns for years 2016, '17, '18. As far as the amount owed, they saw mine with my estimates that I originally disclosed in the original interrogation which were approximately \$7,000 per tax year from 2016 to 2018. (Tr. 2 at 8)

When asked about the status of his 2019 and 2020 income tax returns, Applicant stated that his CPA was going to bring those income tax returns up to date. Applicant estimated that he would owe "about \$41,000 to \$43,000" in past-due federal income taxes for tax years 2016 to 2020, requiring him to set up a payment plan with the IRS. He acknowledged that his employer, a defense contractor, derives their revenue at least in part from money collected from taxes. Applicant was unsure when he would be able to reach an agreement with the IRS regarding a payment plan. (Tr. 2 at 8-14)

In short, as of the date the record closed, Applicant had not filed his income tax returns for tax years 2016 through 2018. His returns for tax years 2019 and 2020 are also unfiled.

Foreign Influence

The SOR lists one allegation under this concern as a result of Applicant having family connections in India. Applicant's family connections are established by his July 15, 2019 SF-86; his August 23, 2019 Office of Personnel Management Personal Subject Interview (OPM PSI); his December 15, 2020 Response to DOHA Interrogatories; and his undated SOR Answer. (GE 1 through 3; SOR Answer.)

SOR ¶ 2.a – **Applicant's grandmother, several aunts, uncles and cousins are citizens and residents of India.** Applicant admitted the relatives as alleged, but denied that they are a Guideline B national security concern. In his SOR Answer, he provided the following information regarding his relatives in India:

. . . in the interests of addressing these concerns very precisely, any conversations I have had in the past with my extended family consist of topics of conversation limited to health of myself and my family members and what hobbies I am interested and pursuing of late. The primary reason for the limited extent of our conversations is due to the language barrier. I personally speak the native language of my extended family, Telugu, at a 1st grade level and cannot read or write. My extended family similarly has very limited English fluency. Beyond that, there is never any mention of work or subjects remotely relating to my work. (SOR Answer)

Applicant speaks "very infrequently" to his grandmother, aunts, uncles, and cousins in India. He does not send them any money. He said his relationship with them would not have any effect on his ability to protect national security. None of Applicant's relatives living in India work for the Indian government except one cousin. Applicant does not communicate with that cousin. (Tr. 2 at 17-18) Applicant has visited India three times in 1998, 2003, and 2016. (Tr. 2 at 18) Applicant's testimony regarding contact with

his relatives in India was consistent with the information he provided during his August 23, 2019 OPM interview. (GE 2)

Applicant is a native-born U.S. citizen, and was raised and educated in the United States. His immediate family consists of his mother, father, and older brother, who are all naturalized U.S. citizens, and live in the United States. Applicant communicates with all three of his immediate family by text, email, or telephone “most days.” (Tr. 2 at 14-17) He was issued a U.S. passport on November 12, 2020, and has never been issued a foreign passport or identity card by a country other than the United States. (GE 1) Outside of his immediate family, Applicant has a “maternal uncle” and “some paternal relatives” and “one more that’s failing me right now” that live in the United States. (Tr. 2 at 17)

Applicant’s mother is a homemaker and his father works for his local county government as a civil engineer. (Tr. 2 at 18-19) Applicant owns a car and has three 401(k)/retirement accounts valued at approximately \$140,000. All of these are assets in the United States. He has no financial ties to India. He is registered to vote in the United States and exercises that right. (Tr. 2 at 19-21) Applicant has no plans to relocate to or retire in India. (Tr. at 22)

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 clearance 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge

must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes one disqualifying condition that could raise a security concern and may be disqualifying in this case: "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record establishes the disqualifying condition in AG ¶ 19(f). Further inquiry is necessary about the potential application of any mitigation conditions.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

None of the mitigating conditions under this concern apply. As of the date the record closed, Applicant had not filed his income tax returns for 2016 through 2018, which were alleged, nor had he filed 2019 and 2020 income tax returns, which were not alleged. Applicant's failure to file his tax returns for 2016 through 2018 is further exacerbated by his failure to timely file his tax returns for 2019 and 2020. He estimated that he owes "about \$41,000 to \$43,000" for tax years 2016 to 2020. Furthermore, Applicant did not offer any plausible acceptable explanation to justify his failure to file his tax returns or that his inability to do so was beyond his control. Although he hired a CPA to assist him in filing his tax returns, there are no clear indications that his tax problems are resolved or under control. The evidence demonstrates that Applicant did not act responsibly with regard to timely filing his Federal income tax returns and paying or making payment arrangements for taxes owed.

Applicant failed to timely file his Federal income tax returns for tax years 2016, 2017, and 2018. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor . . .

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a crime.

In regard to the failure to timely file Federal income tax returns when due, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Applying the Appeal Board's jurisprudence, SOR ¶ 1.a is not mitigated. Applicant failed to timely file his federal income tax returns for tax years 2016 to 2018, as alleged. Nor did he pay his tax that he owed for this period. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Foreign Influence

AG ¶ 6 explains the security concern about foreign influence as follows:

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 indicates two conditions that could raise a security concern and may be disqualifying 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; 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.

Applicant was born, raised, and educated in the United States. His immediate family members, consisting of his mother, father, and older brother, were all born in India, but became naturalized citizens after moving to the United States. He communicates with his immediate family "most days" in contrast to infrequent contact with his grandmother, aunts, uncles and cousins in India. Applicant has visited India a total of three times in 1998, 2003, and 2016. He does not own any property or have any financial connections in India. Any financial holdings that Applicant has are in the United States.

Applicant's relatives in India including his grandmother, several aunts, uncles and cousins, with whom he has what can be described as superficial infrequent contact. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant's immediate family members are all in the United States, with whom he has frequent contact. See ISCR Case No. 01-03120, (App. Bd. Feb. 20, 2002). In addition, Applicant has familial ties of affection to some relatives in India even though his communications with them are infrequent.

Applicant's relationships with his relatives in India create a concern about his "obligation to protect sensitive information or technology" and his desire to help relatives living in India. For example, if terrorists, government officials, or other entities in India wanted to expose Applicant to coercion, they could exert pressure on his relatives living in India. Applicant would then be subject to coercion through his connections to India and classified information could potentially be compromised.

An applicant's ties with his family members in India, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, 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). The evidence did not present any particular relative in India with whom Applicant has what can be described as a close relationship. However, cumulatively the fact that Applicant has relatives who are close to his parents, with whom he does have a close relationship, could create a situation of heightened risk.

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 or inducement. 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 collection operations against the United States. The relationship of India with the United States, places some, but not an insurmountable burden of persuasion on Applicant to demonstrate that his family members' relationships with family members living in India do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives in 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from India seek or have sought classified or economic information from or through Applicant, his relatives living in India, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and India has a problem with terrorism. Applicant and his relationships, notably through his parents, with family members living in India create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in India by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant and his immediate family members' relationships with their family living in India. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation. The record establishes the disqualifying conditions in AG ¶¶ 7(a) and 7(b). Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns including:

- (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 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 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.

AG ¶¶ 8(a) and 8(c) have applicability. Applicant has infrequent and superficial contact with several relatives living in India. Loyalty to, support for, and connections to family are positive character traits. However, for security clearance purposes, those same relationships negate the possibility of full mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is little likelihood that his relationships with relatives in India could create a risk for foreign influence or exploitation.

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant is a U.S.-born citizen and was raised and educated in the United States. He is employed by a defense contractor. Any financial investments that he has are in the United States. He does not have dual citizenship with India nor does he have any rights in India vis-à-vis his family members. He exercises his rights as a U.S. citizen to include voting in U.S. elections.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in India. There is no evidence, however, that terrorists, criminals, the Indian Government, or those conducting espionage have approached or threatened Applicant, his immediate family members living in the United States, or their relatives living in India to coerce Applicant for classified or sensitive information. As such, there is a reduced possibility that Applicant, or their relatives living in India or the United States would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to their relatives living in India is from terrorists and other lawless elements and not the Indian Government.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in India. Applicant and his immediate family's relatives living in India could become potential targets of terrorists because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to them from lawless elements in India.

In sum, Applicant connections to his relatives living in India are not significant. He traveled to India only three times in 1998, 2003, and 2016. There was no evidence presented that Applicant or his immediate family all living in the United States have any financial or property interests in India. The only financial connections that Applicant has are in the United States. Foreign influence security concerns under Guideline B are mitigated.

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.

The ultimate determination of whether to grant or continue national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guidelines F and B is incorporated in this whole-person section. However, further comments are warranted.

To review, Applicant is a 29-year-old experienced electrical design engineer, who has been employed by a defense contractor since August 2020. He seeks to obtain a security clearance to enhance his position within his company. Having been awarded a bachelor of science degree in electrical engineering, he continues to better himself by pursuing a master's degree in electrical engineering. He has all the indicators of an upwardly mobile individual with a bright future ahead of him.

As noted, Applicant has mitigated the foreign influence concerns. However, he has failed to grasp the importance of one of the fundamental hallmarks of U.S. citizenship, which is the timely filing of his income tax returns and paying taxes when due. This is especially crucial for an individual seeking a security clearance, who plans to work for a defense contractor, a defense contractor who advances the national security of the United States. From the evidence presented, despite being made aware that the timely filing of his Federal income tax returns and payment of his taxes was a security concern, Applicant failed to grasp the importance of this basic and fundamental civic obligation. He is certainly a bright and talented individual, who is more than capable of addressing his income tax problems in a responsible way. Hopefully in the near future, Applicant will heed the outcome of this decision as motivation to address

these concerns and achieve the level of financial stability required for national security eligibility.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant's security clearance. National security eligibility is denied.

ROBERT TUIDER
Administrative Judge