



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 06-22050
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: Thomas M. Abbott, Esquire

October 31, 2008

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns pertaining to foreign Influence, but failed to mitigate security concerns pertaining to personal and criminal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 17, 2005. On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the government's security concerns under Guidelines B (Foreign Influence), E (Personal Conduct), and J (Criminal Conduct).<sup>1</sup> The SOR detailed reasons why DOHA could not make the

<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on March 31, 2008, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on May 13, 2008, and was transferred to me on June 11, 2008. DOHA issued a notice of hearing on June 20, 2008. The hearing was convened as scheduled on July 23, 2008. The government offered exhibits (GE) 1 through 9, which were admitted without objection (Tr. 14-15). Applicant testified on his own behalf, and offered exhibits AE A through Y, which were admitted without objection. (Tr. 16-17). DOHA received the transcript of the hearing (Tr.) on August 1, 2008.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a. – 1.d., and 2.d. He denied the allegations in SOR ¶¶ 2.a. – 2.c., and 3.a. His admissions are incorporated herein as findings of fact. After a thorough review of all record evidence, I make the following additional findings of fact.

Applicant is a 41-year-old senior engineer scientist, who has worked for his defense contractor employer since June 2002. He was born and raised in India. Applicant immigrated to the U.S. in 1989 at age 22. Tr. 129-130. He received two bachelor's degrees and a master's degree in the U.S.

In 1996, Applicant married his Indian-born spouse in the U.S. He had traveled to India to meet her, and brought her to the U.S. on a fiancé visa. (GE 1, Tr. 64-65). They have two young children, ages eight and six. (GE 1). In 1995 and 2004, Applicant and his wife, respectively, became naturalized U.S. citizens. Both of their children are U.S. born citizens.

Applicant's parents and two of his siblings, a brother and a sister, are residents and citizens of India. His other three siblings, a brother and two sisters, are residents and naturalized citizens of the U.S. (SOR ¶ 1.a.). Applicant stated he is not close to his parents, but is "respectful" of them and telephones them "once a month, at least." (Tr. 136-138). His brother inherited the family business. Applicant stated he is not close to his brother, but does speak to him usually on birthdays and in total "twice" a year. (Tr. 139-140.) His sister in India is a homemaker and her husband owns an automobile retail shop. Applicant stated he is not close to his sister because of their age difference. (Tr. 49-50.) Applicant speaks to her on the telephone about the same number of times as he speaks to his brother, which generally occurs on birthdays. (Tr. 49, 139-140).

Applicant's father-in-law, mother-in-law, and brother-in-law are residents and citizens of India. (SOR ¶ 1.b.). His mother-in-law is a homemaker, and his father-in-law owns "a couple of chemical manufacturing factories." (Tr. 50-51). Applicant's wife

telephones her parents every “four to six weeks.” (Tr. 51). Applicant’s brother-in-law works for a foreign owned company and “they make electrical things and [they] do a number of different things.” (Tr. 52). Applicant has a sister-in-law (not alleged), who is a homemaker, and her husband is a tax lawyer. Applicant speaks with his sister-in-law by telephone “once every six months.” (Tr. 53-54.) Applicant stated he has not spent much time with his in-laws and therefore does not consider himself to be close with them. Applicant stated his wife is not close with her siblings because of their age difference, and described her relationship with them as “respectful.” (Tr. 53.) Applicant’s wife does not provide her relatives in India with any financial support. (Tr. 54.)

The SOR alleged that Applicant has an aunt and a niece, who are residents and citizens of India. (SOR ¶ 1.c.). During his testimony, Applicant clarified his relationship with his “aunt,” who is actually a distant cousin of his mother. His aunt came to the U.S. and took care of his children from 2001 to 2004. She has telephoned Applicant’s children on their birthdays. (Tr. 54-55). Applicant’s niece is his brother’s daughter. Applicant’s niece stayed with him from 2001 to 2003 while she was working on her master’s degree. Applicant stated he has not communicated with his niece for “about two years.” He last saw her when he attended his nephew’s wedding in India in 2005. (Tr. 56-58).

Applicant’s brother living in the U.S. is a physician, married and has two adult sons. One of Applicant’s sisters living in the U.S. is a widow, and has two adult sons. His other sister is married, and has two children. Applicant did not know what his brother-in-law does because he has not spoken to his sister and brother-in-law in four years. (Tr. 59-61).

Since his arrival to the United States in 1989, Applicant has travelled frequently back to India, initially to meet a bride, and later to visit his family and to participate in family events. He travelled to India in 1995, twice in 1996, 1997, 2003, and 2005. (Tr. 63-67).

Applicant never discusses his work with any of his relatives, including his parents, siblings, and in-laws. Applicant is a loyal American. He promised to report to his employer any inquiries about his work and/or any possible threat against the United States from any foreigners, U.S. citizens, or from his family members (Tr. 61-63, 67).

During a February 2004 government sponsored interview, when Applicant was asked to provide information about foreign nationals who may have lived at his residence, he responded that no foreign nationals resided with him other than his niece, an Indian citizen enrolled in college. He failed to disclose that his wife’s aunt had resided with him for about three months in 2001 and that this aunt had resided with him since about 2001, and was living with him at the time of the interview. (SOR 1.a.)

During the same interview, when Applicant was asked whether he paid any of the foreign nationals residing with him a salary for child care and/or for performing

household duties, he denied having done so. He failed to disclose that he had paid his aunt currently residing with him a salary since late 2001. (SOR ¶ 1.b.).

During March 2004 and April 2004 government-sponsored interviews, when he was asked whether any foreign nationals living with him had been paid a salary for child care and/or for performing household duties, he denied paying anyone a salary. He failed to disclose that he had paid his aunt beginning in late 2001 a monthly salary of \$250, which he later increased to \$350 per month, and beginning in May 2002 increased to \$650 per month. At the time the interviews were conducted, Applicant was paying his aunt \$650 per month and she was in the U.S. on a tourist visa. (SOR ¶ 1.c.).

In May 2005, Applicant was denied program access by another U.S. government agency as a result of his having provided false statements, discussed *supra*. (SOR ¶ 2.d.). The denial letter provided a very detailed account of the facts summarized above. (GE 5). Applicant contested the allegations in his testimony, which I found unpersuasive. (Tr. 68-89).

Applicant submitted five signed, sworn declarations from work-related references. All of the references held Applicant in high regard, considered him to be trustworthy, and a valued employee. They all recommended Applicant for a security clearance. (AE A – E). Applicant owns a home and two rental properties. All of his bank accounts and 401k retirement accounts are in the U.S. He estimates his net worth to be “at least a million and half or more.” (Tr. 135.)

I take administrative notice of the following facts. India is a democratic republic with a cooperative relationship with the United States. The United States recognizes India as a key to strategic U.S. interests, and has sought to strengthen its relationship with India. The United States and India have been committed to a strategic partnership that has seen expanded cooperation in the areas of civilian nuclear activities, civilian space programs, and technology trade. The United States is India's largest trading partner and investment partner.

Notwithstanding, differences remain between the two countries, including concerns about India's nuclear weapons program, abuses of human rights (although, the Indian government is considered to generally respect the human rights of its citizens), and its refusal to sign weapons non-proliferation treaties. Of grave concern is India's increasing cooperation and partnership with Iran and its military forces. Despite advancements in the United States-Indian relations, India has been identified by the U.S. intelligence community as one of the most active collectors of sensitive U.S. economic, industrial, and proprietary information. The United States has sanctioned Indian scientists and chemical companies for transferring to Iran weapons of mass destruction (WMD)-related equipment and/or technology. Additionally, there are numerous documented cases involving the illegal export, or attempted illegal export of U.S. restricted, dual use technology to India.

## Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>2</sup>

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 controlling adjudicative goal is a fair, impartial and common sense 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 national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."<sup>3</sup> 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. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant 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 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.

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<sup>2</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> *Egan*, *supra*, at 528, 531.

Section 7 of Executive Order 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**

Under AG ¶ 6, Guideline B, the government’s concern is that:

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

AG ¶ 7 sets out two conditions that could raise a security concern and may be disqualifying in this case, including:

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

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.<sup>4</sup> Applicant has frequent contacts and a relationship, if not out of affection, certainly out of obligation with his parents, siblings, and his in-laws. His parents and two of his siblings are citizens and residents of India. The closeness of the relationship is shown by Applicant’s frequent telephone contacts

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<sup>4</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

with parents and to lesser extent with his siblings, and his frequent trips to India to visit his family.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Indian agents may exploit the opportunity to obtain information about the United States. His connection to his in-laws also creates a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help them by providing sensitive or classified information.

These relationships create a higher risk of foreign pressure or attempted exploitation because of India's cooperation and partnership relationship with Iran, a country with interests inimical to the United States. His connections to his Indian family also create a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help his family by providing sensitive information. Applicant's frequent travel to India also creates a higher risk of foreign inducement, manipulation, pressure or coercion by the Indian government.

The government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

Six Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that AGs ¶ 8(a) and 8(c) partially apply. Appellant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his Indian family] and the interests of the U.S." His frequent contacts and close relationships with his Indian family members could potentially force him to choose between the United States and India. He did not meet his burden of showing there is "little likelihood that [his relationships with his Indian family members] could create a risk for foreign influence or exploitation."

Applicant has traveled to India six times since he immigrated to the United States in 1989. He did not rule out future travel to India. He and his wife became U.S. naturalized citizens in 1995 and 2004, respectively. Applicant has contacts with and maintains a "respectful" relationship with his parents and siblings and in-laws in India.

The nature of India's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the United States. I considered that the Indian government is a democratic republic with a cooperative relationship with the United States. India generally respects the human rights of its citizens. India is not a hostile country nor are its interests inimical to the United States. The United States and India enjoy good relations and the United States is India's largest trading partner.

Notwithstanding, India's aggressive collection of proprietary and economic information, its industrial espionage against the United States and its partnership with Iran places the burden of persuasion on Applicant to demonstrate that his immediate family members in India do not pose a security risk and that he will not be placed into a position to be forced to choose between loyalty to the United States and his Indian family members.<sup>5</sup> India's partnership with Iran raises further concerns. Iran has an adversarial stance with the United States, a negative human rights record, and it is likely that Iran would target any citizen in an attempt to gather classified or sensitive information from the United States.

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<sup>5</sup> See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See also ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran).



AG ¶ 8(b) fully applies because Applicant has developed a sufficient relationship and loyalty to the United States, that he can be expected to resolve any conflict of interest in favor of the United States' interests. He has lived in the United States for approximately 19 years. He has been a naturalized U.S. citizen for 13 years. His young children have inculcated U.S. values. Applicant and his wife have established themselves as successful American citizens. He has worked hard for numerous employers in the United States, and continues his track record of diligent labor.

Applicant's information suggests his financial and business interests in the United States are valued at around \$1.5 million in contrast to having no assets in India. AG ¶ 8(f) partially applies.

### **Guideline E, Personal Conduct**

Under AG ¶ 18, the government's concern is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

As noted, I found Applicant's explanation for failing to provide truthful responses to government investigators not credible. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information about his aunt living at his residence and providing child care as well as performing household duties. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his level of education, his employment history, his motive to cover up his conduct, thoroughness of the other government agencies denial letter, and overall lack of credibility as it pertained to Guideline E concerns. The truth is constant and had Applicant provided accurate and complete answers in 2004, he would not be in a position of trying to explain them today. He knew or should have known of the importance of providing accurate answers to the investigator, and nevertheless failed to provide information that was material to making an informed security decision.

Of the Personal Conduct Disqualification Conditions, two are applicable AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .", and AG ¶ 16(e): "personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress . . . ."

¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

I specifically considered all Guideline E Mitigating Conditions and conclude that none apply. Applicant's falsification is recent, and her favorable information is not sufficient to apply any of the MCs.

### **Guideline J, Criminal Conduct**

Under AG ¶ 30, the government's concern is as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The government established its case under Guideline J by showing that Applicant provided false statements to investigators in 2004. I find, as discussed above under Guideline E, that Applicant deliberately provided false information to government investigators in 2004. His falsification of answers to government investigators is material, serves to undermine the security clearance adjudication process, and is a violation of 18 U.S.C. § 1001, a felony.<sup>6</sup>

¶ 31. Conditions that could raise a security concern and may be disqualifying include:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

Of the Criminal Conduct Disqualifying Conditions listed *supra*, two are applicable: ¶ 31(a): “a single serious crime or multiple lesser offenses;” and ¶ 31(c) “allegation or admission of criminal conduct regardless of whether the person was formally charged, formally prosecuted or convicted.”

Applicant’s recent falsification brings to the forefront the criminal conduct concerns raised by his past behavior. I am required to consider Applicant’s overall questionable behavior when evaluating the seriousness of the conduct alleged in the SOR to determine factors such as the extent to which her behavior is recent; the

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<sup>6</sup> It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *Egan*, 484 U.S. at 527 (discussing 18 U.S.C. § 1001.)

likelihood of recurrence; Applicant's explanations concerning the circumstances of the incidents alleged; and her rehabilitation.<sup>7</sup>

¶ 32. Conditions that could mitigate security concerns include:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense;

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement; and

(e) potentially disqualifying conditions (b) and (f) above, may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee, has granted a waiver.

Under the totality of the circumstances, I find Applicant's criminal behavior is recent and not isolated. Considering his criminal behavior, the nature and seriousness of his misconduct, his falsifications, I find his favorable information insufficient to mitigate Guideline J security concerns. His behavior raises questions about his ability and willingness to follow the law, and ultimately, to protect classified information. His recent falsifications and lack of candor weigh against a finding of rehabilitation and positive behavioral changes. I find that none of the mitigating conditions 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(a):

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<sup>7</sup> ISCR Case No. 04-09959 at 3 (App. Bd. May 19, 2006).

(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.

Applicant strongly averred he and his family are loyal Americans, that they have woven themselves into the fabric of America through their long-term participation in the community, and their jobs. Applicant has lived in the United States for 19 years and has been a naturalized citizen for 13 years. When he became a U.S. citizen, he swore allegiance to the United States. His two children are also U.S. citizens. They were born in the U.S., and Applicant plans to raise and educate them in the U.S.

Applicant's statement about his loyalty to the United States is credible. There is no reason to believe that he would take any action which could cause potential harm to his sons' and his lifestyle in the United States. There is no evidence he has ever taken any action which could cause potential harm to the United States. He has the respect and trust of his colleagues at work. India is a democracy and ally with the U.S. against terrorism.

Numerous circumstances weigh against Applicant in the whole person analysis. India's relationship with Iran, India's aggressively seeking sensitive or protected U.S. information, that Applicant was born and raised in India, where in spent his formative years. Applicant has frequent and non-casual contact with his family members living in India. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Indian agents or others hostile to U.S. interests may attempt to use Applicant's family members living in India to obtain information about the United States.

For reasons outlined under the discussions of Guidelines E and J, incorporated herein, I conclude Applicant's behavior shows questionable judgment, lack of reliability, and untrustworthiness.

"Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990). After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the

security concerns pertaining to foreign preference. The evidence leaves me with doubts as to Applicant's security eligibility and suitability.

I conclude Applicant has mitigated the concerns arising from foreign influence security concerns, but failed to mitigate the concerns arising from personal conduct and criminal conduct 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:

Paragraph 1, Guideline B: Subparagraphs 1.a-1.d:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a. – 2.d.:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline J: Subparagraphs 3.a.:	AGAINST APPLICANT Against Applicant

### **Conclusion**

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

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ROBERT J. TUIDER  
Administrative Judge