



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



In the matter of:	)	
	)	
REDACTED	)	ADP Case No. 12-05593
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

04/18/2013

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the concerns arising from her possession of a passport from India and her other connections to India. She has continuously resided in the United States for the past 20 years, and became a U.S. citizen in 2003. She formally renounced her Indian citizenship and relinquished her Indian passport. She started a family, purchased a home, and worked her entire adult life in the United States. She has close friends, family, and other substantial ties to the United States. Applicant established that her preferences squarely lie with the United States and she will resolve any potential conflict of interest arising from her ties to India in favor of the United States. Eligibility for access to sensitive information is granted.

**Statement of the Case**

On November 14, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) recommending that Applicant's eligibility for occupancy of an automated data processing (ADP) position, generally referred to as a public trust position, be denied due to concerns arising under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) and

Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).<sup>1</sup>

On December 7, 2012, Applicant answered the SOR and requested a hearing to establish her eligibility for a public trust position (Answer). With her Answer, Applicant submitted documentation showing that she had formally renounced her Indian citizenship and surrendered her Indian passport two years earlier. On February 4, 2013, Department Counsel indicated the Government was ready to proceed with a hearing. On February 11, 2013, I was assigned Applicant's case. The following day a notice of hearing was issued, scheduling Applicant's case for March 5, 2013.

At hearing, Department Counsel stipulated that, based on the evidence Applicant submitted with her Answer, the foreign preference concerns were mitigated.<sup>2</sup> Department Counsel offered Government Exhibits (Gx.) 1 and 2, which were admitted without objection. Department Counsel also submitted Hearing Exhibit (Hx.) I, a proposed summary of facts regarding India. The official, unclassified source documents Department Counsel relied on in preparing HE I were marked as exhibits for administrative notice (An.) I – XIV, and I have considered them in assessing the security concerns at issue. Applicant appeared at the hearing with her husband and they both testified. At Applicant's request, I kept the record open to provide her an opportunity to submit additional documents. She timely submitted Applicant's Exhibits (Ax.) A – F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 14, 2013, and the record closed on March 29, 2013.

### **Findings of Fact**

Applicant is 43 years old and was born in India. She married in 1992 and, shortly thereafter, immigrated to the United States with her husband, who had procured a job in the United States. They settled in the United States and started a family. They have two children, who were born in the United States and are now 10 and 17 years old. Applicant and her husband became U.S. citizens in 2003.<sup>3</sup>

Applicant has worked for her current employer, a U.S. company, for nearly eight years. She is a lead database engineer, maintaining her employer's information technology infrastructure that contains sensitive information. Due to her reliability and trustworthiness in maintaining and protecting sensitive systems in the past, Applicant was selected by her employer to support a DoD contract for which she submitted her

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<sup>1</sup> Pursuant to a Memorandum from the Office of the Deputy Under Secretary of Defense for Counterintelligence and Security, dated November 19, 2004 (Memorandum), the Defense Office of Hearings and Appeals (DOHA) is directed to utilize the provisions of the Directive, to include Enclosure 2, the adjudicative guidelines, to resolve contractor cases forwarded to it for a trustworthiness determination.

<sup>2</sup> Tr. at 16-17, 78-79. The Government elected not to withdraw the Guideline C allegation and, to avoid any potential issues, I have made formal findings regarding said allegation.

<sup>3</sup> Tr. at 34, 41-42, 51-52, 58-60; Gx. 1-2; Ax. A; Answer.

application for a public trust position. She has worked in the United States for the past 16 years and previously served as the database engineer for other U.S. companies, including a major U.S. accounting firm. Her current annual salary is approximately \$120,000. She has received awards and commendations from her current employer for her work, including contributions on a project related to the U.S. Patriot Act.<sup>4</sup>

Applicant's husband was also born in India. He is a software engineer for a U.S. company. Applicant and her family are deeply involved in their community. Her son is a volunteer with the the American Red Cross and has represented his local chapter before the state legislator.<sup>5</sup>

Prior to becoming a U.S. citizen in 2003, Applicant renewed her Indian passport, which was set to expire at the end of 2012. Applicant formally renounced her Indian citizenship and surrendered her Indian passport in 2010. No evidence was presented that Applicant used her Indian passport after becoming a U.S. citizen or that she has an Overseas Citizens of India (OCI) card, which is similar to a U.S. green card and confers to its holder certain benefits. Applicant is not eligible for an Indian passport in the future, because India does not recognize dual citizenship.<sup>6</sup> (SOR ¶¶ 2.a)

Applicant's mother and two of her sisters are citizens and residents of India. Her mother is a widow, who never worked outside the home and financially supports herself through her late husband's pension. One of her sisters is also a widow and works as a clerk for an insurance company. The other sister is married and does not work outside the home. Applicant is close to her mother and sisters. She maintains frequent contact with them, and visits them when she travels to India.<sup>7</sup> (SOR ¶¶ 1.a – 1.b)

Applicant's third sister is a U.S. citizen. She is currently living in India with her husband and children, because her husband's U.S. job transferred him there for a short-term project. Once her husband's project in India is completed, Applicant's sister plans to return to the United States, where she owns a home. Her sister's husband and their children are U.S. citizens.<sup>8</sup>

Applicant's mother-in-law and one of her husband's three brothers are citizens and residents of India. Her mother-in-law has lawful permanent residency status in the United States (green card), and spends part of the year in the United States with

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<sup>4</sup> Tr. at 38-39, 42-43, 60; Gx. 1; Ax. A; Ax.D-E.

<sup>5</sup> Tr. at 71-72; Gx. 1; Ax. A.

<sup>6</sup> Answer; Gx. 1-2. See *a/so*, An. XIII at 11 ("India does not permit its citizens to hold dual nationality." As for OCI card holders, they "can travel to and from India indefinitely, work in India, study in India, and own property in India . . . An OCI card holder, however, does not receive an Indian passport, cannot vote in Indian elections, and is not eligible for Indian government employment.").

<sup>7</sup> Tr. at 43-49, 55-56; Gx. 1-2; Ax. A.

<sup>8</sup> Tr. at 49-51.

Applicant and her family. Applicant's mother-in-law never worked outside the home, is a widow, and spends her time visiting her children and grandchildren. She supports herself from her late husband's pension, though Applicant's husband and his three brothers do provide some support to their mother. Applicant's brother-in-law is a manager of a company in India. Applicant has no other relatives or close friends in India.<sup>9</sup> (SOR ¶ 1.c)

In 2006, Applicant opened an Indian non-resident bank account through the branch office of an Indian bank, located in the United States. It allows Applicant to deposit money in the United States and withdraw it in India. Applicant did so to minimize the amount of cash she travels with when traveling to India. She does not use the account to financially support her family in India. It has a current balance of approximately \$2,000 and Applicant manages the account from the United States. Applicant is also the co-owner, with her husband, of stocks her husband received from his former employer in India prior to their marriage and immigrating to the United States in 1992. This foreign investment account is dormant, and Applicant and her husband have not had access to it for over 18 years. They believe the stocks in the account have grown in value from approximately \$1,000, when her husband received the stocks, to their current value of approximately \$10,000. Applicant and her husband have no interest in this investment, and have not been motivated to look for and submit the necessary paperwork to reactivate the account. If and when they retire, they might look for and provide the necessary information to access the account and transfer the money to the United States. Applicant does not have any other financial interest or property in India or any other foreign country. She voluntarily disclosed her foreign bank account, foreign investment account, and foreign family members on her application for a public trust position. She also fully discussed these foreign connections during her ensuing background interview for a position of trust.<sup>10</sup> (SOR ¶¶ 1.d – 1.e)

Applicant and her husband purchased their home in the United States in 1999. They satisfied the mortgage on the home some time ago, and it has a current value of approximately \$630,000. They also have a number of U.S. investment and retirement accounts, totaling over \$800,000, and a savings account with a balance of about \$500,000. Applicant and her husband plan to live their lives, raise their children, and retire in the United States.<sup>11</sup>

Applicant's employer writes that:

[Applicant] is trustworthy, reliable, organized, efficient, and extremely competent. She has an excellent rapport with all team members, our partners, clients and customers. Her communication skills, both written

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<sup>9</sup> Tr. at 52-56; 64-68; Gx. 1-2; Ax. A.

<sup>10</sup> Tr. at 34-37, 56-58, 60-62, 65-66, 69-72; Gx. 1-2; Answer.

<sup>11</sup> Tr. at 58-61; Ax. B.

and verbal, are excellent. In summary, [Applicant's] performance and professional conduct have been exemplary.<sup>12</sup>

Concerning Applicant's country of birth,<sup>13</sup> India is a multiparty, federal, parliamentary democracy with a population of approximately 1.2 billion. Its political history, since gaining independence from Great Britain in 1947, has included several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit. Despite the growth of a large urban middle-class, India remains a largely rural and agriculture-based society, and is home to some 500-600 million people living in poverty.

U.S.-Indian relations are grounded on the two countries shared values of democracy, pluralism, and rule of law. Furthermore, the United States is one of India's largest trading and investment partners. The two countries have a common interest in the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean. Both countries also share a common interest in fighting terrorism and in creating a strategically-stable Asia. Recognizing India's key strategic position, the United States has sought to strengthen its relationship with India. The countries are collaborating in a number of areas, to include energy, climate change, trade, education, and counterterrorism.

Despite the two countries strategic alliance, differences exist. The United States remains concerned about India's nuclear weapons programs, pace of economic reforms, protection of intellectual property rights, and trade in dual-use technology. Historically, India has been one of several countries that engaged in economic intelligence collection and industrial espionage targeting the United States. Between 2004 and 2008, several individuals and companies were convicted or subjected to regulatory fines for their roles in illegal exporting or attempting to illegally export restricted technology to India.

The U.S. State Department notes a number of significant human rights problems in India, notably abuses committed by police and security forces. Another significant problem is corruption, which remains at significant levels throughout the Indian government and contributes to widespread impunity at all levels of government.

## **Policies**

Positions designated as ADP I and ADP II are classified as sensitive positions. The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that

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<sup>12</sup> Ax. C.

<sup>13</sup> The facts about India are taken from An. I – XIV.

assigning the person to sensitive duties is clearly consistent with the interests of national security.<sup>14</sup>

When evaluating an applicant's eligibility for a position of trust, an administrative judge must apply the provisions of the Directive, to include the adjudicative guidelines (AG or guidelines).<sup>15</sup> In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. While an 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. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position.<sup>16</sup>

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve any doubt in favor of national security.<sup>17</sup>

## **Analysis**

### **Guideline B, Foreign Influence**

The foreign influence concern is set forth at AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

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<sup>14</sup> Memorandum; Directive, § 3.2. Cf. Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended, ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, C6.1.1.1.

<sup>15</sup> Directive, Enclosure 2. See also, Memorandum from the Office of the Under Secretary of Defense for Intelligence, dated August 30, 2006, directing that the adjudicative guidelines be applied to all adjudications and other determinations made under the Directive and DoD Regulation 5200.2-R.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.14 – E3.1.15.

<sup>17</sup> Directive, Enclosure 2, ¶2(b).

An individual's familial ties to a foreign country can raise the foreign influence concern. However, there is no *per se* rule against applicants for a public trust position who have familial ties to a foreign country. Instead, in addressing the foreign influence concern, an administrative judge must consider the foreign government involved; the intelligence gathering history of that government; the country's human rights record; and the presence of terrorist activity in that country.<sup>18</sup>

Applicant's strong ties to her family members in India raise the foreign influence concern. These foreign connections, in light of the threat of terrorism in India and history of unauthorized U.S. technology transfers to India, establish the following disqualifying conditions under AG ¶ 7:

(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;<sup>19</sup>

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's foreign connections and finding of heightened risk does not end the analysis, because AG ¶ 8 lists a number of conditions that could mitigate the concern. The following mitigating conditions under AG ¶ 8 are relevant to the case at hand:

(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.; and

(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

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<sup>18</sup> See ISCR Case No. 11-04980 at 4 (App. Bd. Sep. 21, 2012).

<sup>19</sup> See ISCR Case No. 09-08512 at 3 (App. Bd. Dec. 1, 2011) (judge's finding that "heightened risk" existed was sustained on appeal, because Applicant and his wife had close familial ties to India and the risk of terrorism in India).

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.

AG ¶¶ 8(a) and 8(b) apply. Applicant has been in this country for more than 20 years, and she has been a U.S. citizen since 2003. Her entire professional career has been in the United States. She started a family in the United States, and her children were born and raised in the United States. Applicant and her family are deeply involved in their community, and have close friends and family members in the United States. While she and her husband still have family in India that they care for, their life and future are in the United States. India is a democracy and strategic partner of the United States. Technology has been illegally exported to India, but the documents provided for administrative notice do not show that coercion was utilized. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the Indian government or her family members in India and the interests of the United States. I further find there is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States.

As for the bank account Applicant opened through a U.S. branch office of an Indian bank and the dormant foreign investment account that she co-owns with her husband, such foreign interests are not substantial when compared to their financial holdings and other ties to the United States. Accordingly, I find that there is no likelihood Applicant could be subjected to foreign influence through these relatively minor foreign financial interests.<sup>20</sup> Furthermore, since Applicant voluntarily disclosed these foreign financial interests in her application for a public trust position, she can be expected to reveal any attempt to influence her through them. More importantly, for all the reasons stated above, I find that Applicant would rebuff any attempt to influence her through these relatively minor financial interests in India.<sup>21</sup>

### **Guideline C, Foreign Preference**

Under AG ¶ 9, the concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Before Applicant submitted her Answer, the Government was only aware that Applicant possessed an Indian passport after becoming a U.S. citizen. Such possession would normally raise the foreign preference concern and, specifically, the disqualifying condition at AG ¶ 10(a), “exercise of any right, privilege or obligation of foreign citizenship,” to include “possession of a current foreign passport.” However, with her

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<sup>20</sup> Specifically, I find that disqualifying condition AG ¶ 7(e) does not apply (“a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation”).

<sup>21</sup> Assuming *arguendo* AG ¶ 7(e) applied, it would be mitigated by AG ¶ 8(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.”).



Answer, Applicant submitted documentary proof that she surrendered her Indian passport and renounced her Indian citizenship two years before the SOR was issued. Applicant refuted the foreign preference concerns.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>22</sup> I incorporate my comments under Guidelines B and C herein and note some additional whole-person factors. Although this is Applicant's first application for a public trust position, she has properly maintained and safeguarded sensitive information for years. Her employer specifically nominated her to support a DoD contract because of her reliability and trustworthiness in handling and protecting sensitive information. Trustworthiness adjudications entail a certain degree of predictive judgment, where an applicant's past history is the best indicator of future conduct. Applicant established that she has a history of properly handling and safeguarding sensitive information and there is no reason to doubt her ability to do so going forward.

Additionally, Applicant's personal character and integrity, which are vital matters to be considered in assessing an individual's suitability for a position of trust, are unassailable. Applicant has been candid about her foreign connections from the start of her background investigation. Furthermore, I had an opportunity to observe her and her husband's demeanors while they testified. I found them forthcoming with details regarding their foreign connections to India and wholly credible when they testified about their deep and long-standing relationships to the United States. These favorable whole-person factors, in conjunction with the mitigating conditions noted above, mitigate the concerns at issue. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for a public trust position.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant

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<sup>22</sup> The non-exhaustive list of adjudicative factors are: (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.

Paragraph 2, Guideline C (Foreign Preference):

FOR APPLICANT

Subparagraph 2.a:

For Applicant

**Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Applicant's request for a public trust position is granted.

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Francisco Mendez  
Administrative Judge