



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



In the matter of:)
)
) ISCR Case No. 12-06729
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel
For Applicant: James Y. Boland, Esq.

04/04/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony in this case, I conclude that Applicant mitigated the Government’s security concerns under Guideline L, Outside Activities, and Guideline B, Foreign Influence. Clearance is granted.

Statement of the Case

On October 3, 2011, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On September 17, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline L, Outside Activities, and Guideline B, Foreign Influence. DOD acted under Executive Order 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) effective within the DOD for SORs issued after September 1, 2006.

On October 16, 2012, Applicant answered the SOR, provided additional information, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 23, 2013. I convened a hearing on February 25, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced five exhibits. I marked the exhibits as (Ex.) 1 through Ex. 5 and entered them in the record without objection. The Government also offered for administrative notice a summary memorandum containing facts about India which were drawn from 14 official U.S. Government documents. The Government provided, for the record, the source documents from which the facts in the summary memorandum were derived. I marked the Government's summary memorandum and accompanying source documents about India as Hearing Exhibit (HE) 1. Applicant did not object to my taking notice of the facts in the summary memorandum or in the source documents.

Applicant testified and called no witnesses. At the hearing, he introduced two exhibits, which were identified as Ex. A-1 and Ex. A-2. Applicant's exhibits were entered in the record without objection. At the conclusion of the hearing, I left the record open until the close of business on March 11, 2013, so that Applicant could, if he wished, provide additional information for the record. Applicant timely filed a motion to supplement the record and eleven post-hearing evidentiary exhibits. The Government filed a response to Applicant's motion and post-hearing submissions and did not object to them. I marked Applicant's motion to supplement the record as HE 2. I marked the Government's response as HE 3. I marked Applicant's post-hearing submissions as follows: Exs. B-1, B-2, B-3, B-4, C, C-1, D, D-1, D-2, E, and E-1. All were entered in the record. DOHA received the transcript (Tr.) of the hearing on March 5, 2013.

Findings of Fact

The SOR contains one allegation under Guideline L, Outside Activities (SOR ¶1.a.), and two allegations under Guideline B, Foreign Influence (SOR ¶¶ 2.a. and 2.b.). In his Answer to the SOR, Applicant admitted the allegation under Guideline L, but he denied that a conflict of interest or an increased risk of unauthorized disclosure had been created. He admitted both Guideline B allegations, with explanation. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including Applicant's testimony, all exhibits, all relevant policies, and the applicable adjudicative guidelines, I make the following additional findings of fact:

Applicant is 62 years old, married, and the father of one adult child. He was born and raised in India. He earned two postsecondary degrees in India: a Bachelor of Science degree in 1970 and a Bachelor of Engineering degree in 1974. He then studied

in the United Kingdom from 1975 to 1977 and earned a Master of Science degree. (Ex. 1; Ex. 2.)

Applicant came to the United States in 1977 and studied for three years at a U.S. university, but he did not take a degree. In 1977, he married his wife, a native-born U.S. citizen. He became a U.S. citizen in November 1982. Applicant's mother, who was born and raised in India, is 91 years old. She is a U.S. citizen and resides with Applicant and his family. (Ex. 1; Ex. 2: Tr. 32.)

Applicant stated that he was first awarded a security clearance in 1978, before he became a U.S. citizen. On his e-QIP, he stated that he was also awarded a security clearance in 1989. In about 1985, Applicant founded his own company. He has served as president and general manager of the company since 1993. The company, a government contractor, specializes in logistics, internet technology, and aircraft maintenance programs. It has approximately 166 employees. Applicant served as his company's facility security officer (FSO) until October or November of 2012. (Tr. 37, 40, 53-55.)

Applicant's company has prospered. In 2012, the company's annual revenue was \$18 million. Applicant estimated his own net worth at \$8 million. Applicant testified that the company carries no debt, and he has no outstanding debts. (Ex. 3; Ex. 5; Tr. 39-41.)

In 2005, however, Applicant's business experienced a financial downturn. At about that time, Applicant established a business organization in India. Because skilled technical labor was cheap in India, Applicant wanted to establish an independent business that would provide "back support" software engineering services at a lower cost to his company in the United States. He delegated responsibility for establishing and managing the new company to two employees, who were tasked to travel to India, find a suitable location, and hire and manage Indian software engineers in carrying out general engineering work and a specific non-classified software development project.¹ (Answer to SOR; Tr. 59-65.)

Applicant was the majority owner and one of four directors of the Indian company. He was not an employee of the company. He was not a part of the management or financial team and was not involved in day-to-day activities. He spoke on the telephone with the individuals at the Indian office two or three times a week to

¹ Public information about this non-classified project appears in a 2012 news release on the web site of Applicant's U.S. company. The program is generally defined as the application of cost-benefit analysis to facilities management. The news release quotes Applicant as saying that the software program is "available now." However, at his hearing, Applicant asserted that, since its inception in 2005, the program has never been finalized, has never been used, and does not work. He further stated that he stopped advertising the product because to date he considers the money invested in its development to be a "lost cause." (Ex. 3; Tr. 65-71, 77-78.)

provide technical guidance on the non-classified project. Applicant had no other property or financial interests in India. (Answer to SOR; Ex. 1; Ex. 2; Tr. 64-65.)

Guideline L

The SOR alleged at ¶1.a. that the company Applicant established in India posed “a conflict of interest with the security responsibilities of your U.S. clients and customers, and/or create[d] an increased risk of unauthorized disclosure of classified and/or protected information.”

Applicant testified that when he received the SOR in September 2012 and learned that his affiliation with the Indian company had been identified as a possible security issue, he took steps to resign as a director of the Indian company and divest himself of the Indian business. In response to the SOR, Applicant provided two documents. The first document was a letter, addressed to the directors of the Indian company, and signed by Applicant, stating that he resigned from his position as managing director, effective September 28, 2012. The second document was a notarized agreement for the purchase and sale of a business, which the purchaser of the business signed before a notary on October 10, 2012, and which Applicant signed before a notary on October 15, 2012. (Ex. A-1; Ex. A-2; Ex. B-1; Ex. C; Tr. 46-50.)²

In post-hearing submissions, Applicant provided additional information related to his role in the Indian company and its purchase and sale. The operation head of the Indian company provided a sworn statement, dated February 28, 2013, in which he recounted receiving, from an internet technology specialist in Applicant’s U.S. company, a letter signed by Applicant announcing his resignation, effective September 28, 2012, as a director of the Indian company. The operation head also provided the following: a copy of the resolution passed by the board of directors removing Applicant from the board and authorizing the operation head to give notice to the appropriate Indian government entity that Applicant had been removed as a director; and a receipt, dated October 27, 2012, showing payment of 300 rupees, issued by the Indian Ministry of Corporate Affairs, establishing that the Indian company had complied with requirements to give notice of Applicant’s removal as a director. (Ex. B-1; Ex. B-2; Ex. B-3; Ex. B-4.)

Applicant also provided post-hearing documentation which included a sworn statement from the individual who purchased the Indian company from Applicant. In his statement the individual asserted that he had executed a purchase and sale agreement to acquire Applicant’s total interest in the Indian company on October 10, 2012, for \$7,000. He provided a copy of the sales contract and a list (Schedule “A”) of the company assets that were transferred in the sale. The new owner also stated that the only work performed by the company was the development of a proprietary non-classified commercial software product under the exclusive control of Applicant’s U.S. company. (Ex. C; Ex. C-1.)

² Applicant’s Ex. A-1 and Ex. B-2 are copies of the same document.

Also as a post-hearing submission, Applicant provided a sworn statement which further identified the non-classified commercial software product as:

a private, commercial product that I originally envisioned and has never been sold to the United States or elsewhere and was never developed as part of a government contract, never funded by the U.S. Government, and never utilized on Government equipment, servers, etc. It is a side project that has nothing to do with [Applicant's U.S. company's] work as a government contractor, and certainly nothing to do with our classified contracts, which are exclusively performed onsite at secured DoD and government facilities only. (Ex. D.)

In support of his description of the commercial project, Applicant included the original task order that his U.S. company issued to the Indian company in 2005. The task order specified the following actions: "Software program management support, operational analysis, requirements/capability development, training, oracle database support, software development, data mining data recovery & Backup, Webmaster, Graphic Designing Service and Software Testing." He provided invoices from the Indian company for 2012 showing that the work done was consistent with the task order. The task order specified that Applicant's U.S. company would "provide unclassified documents and other support necessary for [the Indian company contractor] to develop the [project software]." (Ex. D; Ex. D-1; Ex. D-2.)

Applicant further asserted that there was no cyber-security risk with the development of the commercial project in India and the delivery of research results to the U.S. company. He provided a detailed declaration from the Lead Internet Technology (IT) professional at the U.S. company stating that the U.S. company "complies with all guidelines provided by DOD IT security management procedure in accordance with the DOD 5220-22-M and [the U.S. company] vendor security policy." The IT professional further stated that the U.S. company "follows all security procedures to protect networks, servers and workstations," "does not permit vendors or consultants to access its computer network," and stored all commercial project codes and information on a stand-alone laptop that is never connected to the company network. (Ex. D; Ex. E; Ex. E-1.)

Guideline B

SOR ¶ 2.a. cross-alleges Applicant's ownership of a company in India as a security concern under Guideline B, Foreign Influence. Additionally, the SOR alleges at ¶ 2.b. that Applicant's brother-in-law and two sisters are citizens and residents of India.

One of Applicant's sisters is a university professor in India. Her husband is also a university professor. Applicant's other sister was employed as a teacher in India. Her husband was employed by the forest service. Both are now retired and reside in India. Applicant testified that neither his sisters nor his brothers-in-law have any ties to the Indian government. He also testified that the university that employs his sister and

brother-in-law has no ties to the Indian government. Applicant has a third sister who is a citizen of the United Kingdom (UK). She has retired from a position in the UK Department of Agriculture. (Tr. 34-37, 95-96.)

Applicant's last visit to India occurred in 1984. Other than the Indian company he founded in 2005 and sold in October 2012, Applicant has no other business, financial or property interests in India. His contact with his two sisters and their husbands in India is occasional. He testified that during the last six months, he has spoken on the telephone with his sister who is the university professor two or three times. In an interview with an authorized investigator, Applicant stated that he had telephone contact with his sister who is retired every one or two years. He also told the security investigator that his sister who is a university professor and her husband know he is being considered for a security clearance. (Ex. 1; Ex. 2; Tr. 35, 95-97.)

I take administrative notice of the following facts about India, as provided by the Government to Applicant and to me:

According to its constitution, India is a "sovereign, socialist, secular democratic republic." India's political history since it gained independence from Great Britain in 1947 has included: (a) wars with Pakistan in 1947, 1965, and 1971, and the 1999 intrusion of Pakistani-backed forces into Indian-held territory that nearly turned into full-scale war; (b) a 1975 declaration of a state of emergency, with the suspension of many civil liberties; (c) the assassination of Prime Minister Indira Gandhi in October 1984; (d) the assassination of Prime Minister Rajiv Gandhi in May 1991 while he was campaigning for parliamentary elections; (e) sporadic outbreaks of religious riots, in which numerous people have been killed; and (f) violent attacks by a variety of separatist and terrorist groups in different parts of the country. In late November 2008, terrorists coordinated attacks in Mumbai, targeting areas frequented by Westerners, which highlighted the risk of Americans becoming intended or unintended victims of terrorism in India.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. Anti-Western terrorist groups, some on the U.S. Government's list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, India Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. India is one of the world's most terrorism-afflicted countries and one of the most persistently targeted countries by transnational terrorist groups such as Lashkar-e-Tayyiba.

The Soviet Union was India's main foreign benefactor for the first four decades of Indian independence. After the 1979 Soviet invasion of Afghanistan, India implicitly supported the Soviet occupation. India had

long-standing military supply relationships with the Soviet Union, and India continues to obtain the bulk of its military supplies from Russia.

Although the United States has sought to strengthen its relationship with India, there are some differences between the United States and India, including differences over India's nuclear weapons programs and the pace of India's efforts in economic reforms. In July 2009, however, the United States and India issued a joint statement of their intentions to foster bilateral relations by establishing working groups to address (1) strategic cooperation, (2) energy and climate change, (3) education and development, (4) economics, trade, and agriculture, and (5) science and technology, health, and innovation.

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists India, along with seven other countries, as being involved in criminal espionage and U.S. export controls enforcement cases in 2008. An earlier version of that report specifically lists India as being among the most active collectors of U.S. economic and proprietary information and highlights specific incidents wherein India engaged in attempts to acquire export-restricted products.

There have been numerous instances of violations of U.S. export laws involving India, which evidences India's desire to acquire U.S. technology regardless of the laws protecting that technology. In March 2008, the owner of an international electronics business pleaded guilty to conspiracy to illegally export controlled technology to government entities in India that participate in the development of ballistic missiles, space launch missiles, and fighter jets. Furthermore, there have been other cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to India, including: (1) high-tech testing equipment that posed an unacceptable risk of being diverted to a weapons of mass destruction program; (2) equipment which can be used in military and civilian aircraft to extract vibration information from engines and to simulate output for calibrating, servicing, and testing that equipment; (3) equipment that is used to manufacture a material that improves the accuracy of strategic ballistic missiles with nuclear capabilities; (4) an animation system to an Indian entity determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery; (5) nuclear pulse generators to two Indian entities that have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or missiles used to deliver these weapons; and (6) heat treating containers to an Indian entity determined to present an unacceptable risk of diversion to developing weapons of mass destruction or missiles used to deliver these weapons. The National Counterintelligence Executive warned that the threat to the United States from foreign economic intelligence collection and industrial espionage has

continued unabated with foreign collectors continuing to target a wide variety of unclassified and classified information in a range of sectors.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 L: Outside Activities

AG ¶ 36 expresses the following security concern pertaining to outside activities: “involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual’s security responsibilities and could create an increased risk of unauthorized disclosure of classified information.”

Applicant’s ownership of a software development company in India raised possible security concerns under AG ¶ 37, which reads, in pertinent part. “(a) [a]ny employment or service, whether compensated to volunteer, with: (2) any foreign national, organization, or other entity.”

Applicant’s ownership of the Indian software company could be mitigated under AG ¶ 38(b) if he “terminated the employment or discontinued the activity after being notified that it was in conflict with his or her security responsibilities.” The record evidence establishes that when he learned that his ownership of the Indian company could pose a security concern, Applicant resigned as a director of the company and sold the company to another individual. He provided documentary evidence to establish that he had terminated the activity after being notified it was in conflict with his security responsibilities. I conclude that AG ¶ 38(b) applies in mitigation to the facts of Applicant’s case.

Guideline B: Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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

(e) 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.

AG ¶¶ 7(a), 7(b), and 7(e) apply in this case. Applicant's two sisters and his brother-in-law are citizens and residents of India. The SOR established, and Applicant admitted, the existence of a substantial business interest in India that could subject him to a heightened risk of foreign influence or exploitation.

India is known to be an active collector of U.S. economic and proprietary information. In recent years, India has attempted to illegally acquire export-restricted technology products from U.S. companies that are federal contractors. In 2008, terrorists attacked areas in Mumbai, India, that were frequented by Westerners. Since that time, there has been a continuing threat that U.S. citizens might become the intended or unintended victims of terrorism in India.

Applicant became a U.S. citizen in 1982. He last traveled to India in 1984. As a U.S. citizen, he has developed a successful government contracting business in the United States. He estimated that in 2012, revenues from his business were \$18 million. He estimated his own net worth at \$8 million. Applicant's relationships with his two sisters and his brother-in-law who are residents and citizens of India are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with citizens and residents of India create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" family members who are in India. For example, if the Indian

government wanted to coerce Applicant, it could exert pressure on his family members in India.

The nature of a nation's government, its relationship with the United States, and its record in seeking protected or proprietary information held by U.S. government contractors is 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, if a family member is associated with or dependent upon the government, or if the country is known to conduct intelligence collection operations against the United States. The relationship of India with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationships with his family members living in India do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his siblings or in-laws.

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 at 4-5 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from India seek or have sought classified or economic information from or through Applicant or his family members living in India, it is not possible to rule out such a possibility in the future. Applicant's continuing relationships with family members create a potential conflict of interest because these relationships are sufficient to raise a security concern about his desire to assist his family members in the event they should be pressured or coerced for sensitive or classified information.

AG ¶ 8 lists six 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;

(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.

AG ¶¶ 8(a) and 8(c) have applicability in this case. Applicant's family members in India are university professors and retirees. They do not have contact with the Indian government. It is not likely that their positions or activities could cause Applicant to be placed in a position of having to choose between their interests and those of the U.S. government. There appears to be little likelihood that his relationships with relatives who are Indian citizens could create a risk for foreign influence or exploitation.

AG ¶ 8(b) also applies. Applicant has not visited his family in India since 1984. His contacts with his sisters and brother-in-law are occasional. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has resided in the United States since 1977. He became a U.S. citizen in 1982, and he has built his personal and professional life in the United States. He has established a successful business in the United States, and he reported a net worth of approximately \$8 million.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members in India. He communicates by telephone occasionally with his siblings in India; however, he has not traveled to India to visit them for almost 30 years. There is no evidence that terrorists, criminals, or those conducting espionage have approached or threatened Applicant or his family in attempts to coerce Applicant or his family for classified or sensitive information.

While AG ¶¶ 8(d) and 8(e) do not apply, AG ¶ 8(f) applies in this case. Applicant owned a business in India. However, when he learned that his ownership could be a

security concern under Guideline L, he sold the business and resigned from his position as a director. The value of his property interest is now zero, and it will not result in a conflict of interest or subject Applicant to pressure or manipulation.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the whole-person concept and all the facts and circumstances surrounding this case. Applicant has been a U.S. citizen for 30 years. He has made his life in the United States, and he has developed a successful business. He has not returned to India to visit since 1984, and his contacts with his two siblings and brother-in-law there are infrequent. When he learned that his financial and management activities in an Indian company could raise security concerns, he divested himself of those activities. I conclude that Applicant mitigated security concerns raised under the outside activities and foreign influence adjudicative guidelines.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under Guideline L, Outside Activities, and Guideline B, Foreign Influence.

Formal Findings

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

Paragraph 1, Guideline L:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. and 2.b.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Joan Caton Anthony
Administrative Judge