



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



In the matter of: )  
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) ISCR Case No. 14-00565  
)  
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Applicant for Security Clearance )

**Appearances**

For Government, John B. Glendon, Esq., Department Counsel  
For Applicant: Eric A. Eisen, Esq.

10/15/2014

**Decision**

MASON, Paul J., Administrative Judge:

Applicant was born in India in 1969. Desiring additional education, he immigrated to the United States in 1997, after receiving two degrees in India. He has been working for his American employer since 1999. He received his U.S. citizenship in September 2009. The understandable foreign influence concerns created by Applicant's four foreign family members, citizens and residents of India, are credibly mitigated by his strong relationships and loyalties in the United States to his family, and his extended family, as well as his employment and his community. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on October 8, 2012. He was interviewed by an investigator from the Office of Personnel Management (OPM) on December 3, 2012. The summary appears in Government Exhibit (GE) 2, notarized by Applicant on December 11, 2013.

On March 27, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 adjudicative guidelines (AG), effective in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on May 16, 2014. A notice of hearing was mailed to Applicant on August 5, 2014, scheduling a hearing for August 28, 2014. The hearing was held as scheduled. The Government's four exhibits (GE 1-GE 4) and the Applicant's five exhibits (AE A-AE E) were admitted in evidence without objection. Applicant and his wife testified. The transcript was received by the Defense Office of Hearings and Appeals (DOHA) on September 8, 2014. The record closed on September 8, 2014.

### **Ruling on Procedure**

Department Counsel requested that I take administrative notice of certain facts about India. The facts which I will administratively notice appear after Findings of Fact. The facts administratively noticed are limited to matters that are obvious to the average person, easily verifiable, and relevant to this case. (Tr. 11-13) The Administrative Notice Memorandum and list of administrative notice documents shall be marked as Hearing Exhibit (HE 1) and admitted into the record.

At the beginning of the hearing, I was informed that in August 2013, Applicant's public trust employment position was converted to a position requiring security clearance access. References to the transcript (Tr.) will be followed by the page number. (Tr. 60) *See also*, Tr. 2-6.

### **Findings of Fact**

The SOR contains four allegations under foreign influence (Guideline B). Applicant admitted his mother, father, sister, and brother-in-law are citizens and residents of India. (SOR 1.a-1.d) These allegations are based on Applicant's e-QIP (GE 1), his December 2013 interrogatory responses containing his December 2012 interview summary (GE 2), the hearing transcript, HE 1, and his character statements. Applicant agreed with the December 2012 interview summary and indicated that it could be admitted into evidence to determine his security suitability. (GE 2) Based on the entire record, I make the following factual findings.

Applicant is 44 years old and has been employed for approximately 16 years as a software engineer by a defense contractor. He is married with two children. He is applying for a secret clearance.

Applicant was born in India in 1969. In the early 1990s, he received a bachelor's degree in physics from a university in India. He continued his education and received a master's degree in material science in 1995. He worked at a materials testing facility for a period, but a disagreement with management influenced him to consider additional education in the United States. With the financial help of his parents, he came to the United States in January 1997 and enrolled in an American university to study engineering management and information systems.<sup>1</sup> While pursuing his degree, he worked part-time for his current employer in 1998. After receiving his engineering management degree in May 1999, he became a full-time computer software engineer with the same employer. He was naturalized as a U.S. citizen in September 2009. Applicant's five-year-old son and three-year-old daughter were born in the United States and are U.S. citizens. (GE 1 at 12-13, 19; Tr. 37-44, 60, 70)

Applicant's wife, a U.S. citizen because of her birth in the United States, is 41 years old. For the last 14 years of her teaching career, she has been an instructor at a preparatory day school. Applicant met his wife in 2004 and they were married in March 2005. Anticipating a desire to grow their family, they moved out of an apartment and purchased a home in 2007, where they still live. Applicant enjoys a very close relationship with his wife's family and her parents. His wife's sister (AE C) has two children who interact with Applicant's children during yearly holiday visits. The holidays provides Applicant time to exchange information with his wife's father (AE D) about their shared interest in woodworking. (GE 1 at 10-11; Tr. 22-30)

Applicant's mother, father, sister, and brother-in-law (his sister's husband) are citizens and residents of India. (SOR 1.a-1.d) Applicant's mother is 74 years old. (SOR 1.a) She was a "lecturer" (teacher) at a high school until she retired in 1998. His contacts with her are by telephone and video transmissions, and range from daily to twice a week, in addition to regularly travelling to India yearly for family visits. He travelled to India in 2013 to assist his mother while she was recovering from a double knee replacement. (GE 1 at 19, Tr. 51, 65, 77)

Applicant's father is 72 years old. (SOR 1.b) In 2003, he retired from a commandant position in the government of India border security, spending time in assignments around the country. Applicant telephones his father on a monthly basis. His father supports himself and Applicant's mother with a pension and rental earnings from commercial property inherited from the grandfather of Applicant's mother. Applicant's provides no additional support to his parents. (GE 1 at 19; Tr. 67-70, 88)

Applicant's sister is 46 years old and is the housewife (SOR 1.c.) of Applicant's brother-in-law (SOR 1.d) She married her husband in 1996 and Applicant attended the wedding. His sister has a 16-year-old son and 11-year-old daughter, who are residents and citizens of India. Applicant's contacts with his sister are between once a month to once every three months. (GE 1 at 19; Tr. 71-72)

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<sup>1</sup> Applicant's employer sponsored his immigration to the U.S. in 1997. (AE A)

Applicant's brother-in-law has been in the army of India for approximately 20 years. He completed an officer's academy to become an officer. Currently, he is a colonel. Applicant's last contact with his brother-in-law was about a year ago. At several locations in his October 2012 e-QIP, Applicant indicated that he contacted his brother-in-law during yearly family visits to India. (GE 1 at 35, 39; GE 2 at 1; 72-74)

Applicant had a bank account in India from 2000 to 2005. He used the account, which contained approximately \$1,100, to assist his parents in times of need. The bank issued Applicant an unsecured credit card with the Applicant's bank funds as collateral. The funds were misused by someone who had intercepted the credit card. When the bank refused to reimburse Applicant, he closed the account in 2005. (GE 1 at 31; GE 2 at 2-3)

In addition to their home, Applicant and his wife have retirement accounts and a family savings account. Applicant's retirement account is approximately \$90,000. They have no assets or interests in India. (Tr. 31, 62)

Applicant has never been involved in any organization that seeks the overthrow of the U.S. Government. He does not believe that the presence of his foreign family members in a foreign country make him susceptible to pressure or influence by a foreign entity. He does not have a sympathy for a foreign country over the United States. In sum, Applicant would not consider compromising his allegiance to the United States. His children are U.S. citizens and he will not jeopardize their security. (GE 1 at 50; GE 2 at 2-3; Tr. 64)

## **Character Evidence**

Applicant submitted four character statements from his employer, his neighbor, his wife's sister, and his wife's parents. The vice president of Applicant's American employer, who is also the facility security officer (FSO), and has been his supervisor for 16 years, has worked with Applicant on several projects. She considers him to be a skilled employee and team player whose integrity and honesty are above reproach. He is also a good American citizen, patriot, and devoted family man. (AE A)

Reference B indicated that he has been Applicant's neighbor since 2007. Applicant is active in the neighborhood watch program that provides security for the community. Applicant has constructed toys for Reference B's children. (AE B)

Reference C, the married sister of Applicant's wife, is a librarian when she is not raising her two young children. The regular holiday visits between the sister's family and Applicant's family have forged a strong bond. Reference C's opinion of Applicant's trustworthiness is based on the fact that she would have no hesitation trusting her children to Applicant's care as she has done in the past. (AE C)

In character reference D, a collaborative statement signed by the mother and father of Applicant's wife, they indicated that they maintain contact with Applicant's family

on a weekly basis through emails and other types of social communications media, as well as yearly holiday visits. They believe Applicant is a good husband and father. They substantiate reference C's opinion of Applicant's trustworthiness. (AE D)

### **Administrative Notice**

India is a sovereign, socialist, secular democratic republic with multiple political parties conducting government activities in a federal parliamentary democracy model. The country has about 1.21 billion citizens.

The United States considers India key to its strategic interests and has strengthened its relationship after a period of strained ties caused by India's development of nuclear weapons. The United States has removed or revised U.S. export requirements for sale to India of dual-use and civil nuclear items, including nuclear reactors, even though there have been several documented cases involving the attempted or illegal export of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to be applied for prohibited purposes. As of 2000, India was considered actively engaged in economic intelligence collection and industrial espionage directed at the United States. By 2008, India was considered heavily involved in criminal espionage in illegally obtaining U.S. export-related products.

Both countries are dedicated to the free flow of commerce, to fighting terrorism, and establishing stability in Asia. The United States is India's largest trading and investment partner. Foreign assistance to the country was about \$3 billion, with the United States providing about \$126 million in developmental assistance.

India continues to have problems with terrorism. Of the more than 2,300 people who lost their lives in 2008 because of terrorist incidents, 180 were killed during an attack on an internationally known hotel in November 2008. Terrorist activity is also concentrated in Kashmir, a disputed area bordering Pakistan. Separatist and terrorist groups are still active in other parts of the country.

Regarding human rights issues, the government of India generally respects its citizens' rights. However, corruption in the police and security forces continues to be a problem, particularly in criminal investigations and during efforts to suppress separatists and terrorist groups. Abusive practices against women and children, and caste-based discrimination persists, despite criminal penalties for violations. But there is no evidence that India uses force or duress to obtain economic intelligence from its citizens.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Following the security concern definition 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 must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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.”

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.

## **Analysis**

### **Foreign Influence**

AG ¶ 6 sets forth the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains two potential disqualifying conditions that may be pertinent 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; 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 individual’s desire to help a foreign person, group, or country by providing that information.

The mere possession of ties and contacts with a family member in a foreign country is not disqualifying under Guideline B. On the other hand, if an applicant has contact with an immediate or extended family member living in a foreign country, this single factor may create a potential for foreign influence that is disqualifying under the guideline. The Government must establish that these family connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or would create a potential conflict of interest between his obligations to protect classified information and his desire to help his family member who may be experiencing foreign influence.

The foreign influence guideline is not limited to countries hostile to the United States, but applies to friendly nations whose disagreements with the United States may or may not motivate them to engage in some kind of harmful activity against U.S. interests.

Applicant's mother, father, sister, and brother-in-law are citizens and residents of India. Applicant has daily to monthly contact by telephone and other video communications with his mother and father. Applicant's contacts with his sister are between once a month and once every three months. Applicant's last contact with his brother-in-law was about a year ago. Overall, Applicant's contacts with his family members in India create a heightened risk of foreign influence because of the possibility that a criminal agent or corrupt official of the government in India may try to wield pressure on Applicant through a family member in India to obtain, intelligence, classified or economic information. AG ¶ 7(a) applies. Applicant's connections to his family also create a potential conflict of interest under AG ¶ 7(b) because his relationships are sufficiently close to generate security concerns about his desire to help his foreign family members or help the government of India obtain proprietary or classified information.

The Government has presented sufficient evidence under AG ¶¶ 7(a) and 7(b). The burden then moves to Applicant to present evidence under AG ¶ 8 that demonstrates he is unlikely to be placed in a position of having to choose between his family members and U.S. interests. The potential mitigating conditions are:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 minimal, or the individual has such deep and long-lasting relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that I could create a risk for foreign influence or coercion.

Applicant's mother, father, sister, and brother-in law, are citizens and residents of India. However, his mother has been retired for 16 years from her teaching position in the school system of India. His father was a commandant in the military service of India. However, he has been retired since 2003. His primary support comes from the commercial property rentals rather than his pension from the government of India. Applicant provides no support to his parents. Regarding his brother-in-law, Applicant has been entirely candid throughout the security investigation about his brother-in-law's 20-year-career in the military service and his current position as colonel. Considering Applicant's ties to his foreign family members, AG ¶ 8(a) applies in part.

On the other hand, AG ¶ 8(b) is fully applicable. Although Applicant's father receives a pension from the Indian government and his brother currently is a colonel, there is no evidence terrorists or sinister criminal elements or officials of the government of India have ever targeted Applicant or any foreign family member for sensitive or classified information. In addition, while the United States has had substantial disagreements with India in the past, the ties between the two countries have developed into a close economic and strategic relationship that India would not want to jeopardize by exerting foreign influence on its own citizenry to coerce Applicant to betray his country.

Judging by the total record, Applicant provided credible evidence that he "can be expected to resolve any conflict of interest in favor the U.S. interest." Applicant immigrated to the United States in 1997 to continue his education. He met his wife (U.S. citizen) in 2004 and they married in 2005. Applicant became a U.S. citizen in September 2009, and his citizenship based on his birth in India was automatically revoked. Applicant's two children were both born in the United States. Applicant and his wife have a savings account and retirement accounts. Neither he nor his wife have financial interests in India. He has worked for his employer since May 1999, and has performed commendably. He is a good father and devoted husband. While AG ¶ 8(b) is fully applicable, AG ¶ 8(c) is not applicable because Applicant's contacts with his family members are neither casual nor infrequent. Applicant's regular travel to India has no independent security significance because the reasons were to visit his family and help his parents recover from double knee replacements.

### **Whole-Person Concept**

I have evaluated this case under the specific disqualifying and mitigating conditions of the foreign influence guideline. I now consider those findings in the context of the nine general factors of the whole-person concept identified in 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 the participation was 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 on careful consideration of the specific guidelines and nine factors for the whole-person concept.

Although Applicant has close ties with his family members in India, he has stronger relationships and ties in the United States. He has lived in this country for 17 years. He has provided a good job performance for the same employer for 16 years. He has been married to a U.S. citizen for nine years. He does not want to jeopardize the future of his two young children who are U.S. citizens. He has owned his home since 2007. Applicant's concern with his community is exemplified by his participation in the neighborhood watch program. After weighing the disqualifying and mitigating conditions, in the context of the whole person, Applicant has mitigated the security concerns associated with foreign influence.

### **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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraphs 1.a-1.d: 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.

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Paul J. Mason  
Administrative Judge