



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-01687
)
 Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a native of India who relinquished his Indian citizenship on his U.S. naturalization in June 2002. His father, brother, brother's spouse, mother-in-law, and three brothers-in-law are all resident citizens of India. Applicant provided financial support to some family members in India, but he does not intend to do so in the future. The foreign influence concerns raised by his security significant ties to India are overcome by his strong ties to the United States, where he and his spouse have chosen to make their home, he has pursued his entire professional career, and they have raised their children, who are U.S. citizens from birth. Clearance granted.

Statement of the Case

On October 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and explaining why it was unable to grant a security clearance to Applicant. The 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 on September 1, 2006.

Applicant responded to the SOR on November 6, 2014, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a security clearance for Applicant. On October 26, 2015, I scheduled a hearing for November 18, 2015.

I convened the hearing as scheduled. One Government exhibit (GE 1) was admitted into evidence without objection. Department Counsel's letter forwarding discovery of the Government's exhibit was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Applicant submitted 53 exhibits (AEs A-AAA), which were admitted without any objections. Applicant also testified, as reflected in a transcript (Tr.) received on December 3, 2015.

At the Government's request and with no objections from Applicant, I amended the SOR to correct a typographical error.¹ I also agreed to take administrative notice of pertinent facts related to India and its foreign relations.² The Government's request for administrative notice, dated May 1, 2015, was amended from the copy provided to Applicant before the hearing in that two new footnotes had been added. The request for administrative notice was based on excerpts of publications from the Office of the National Counterintelligence Executive, the National Counterintelligence Center, the U.S. Department of Justice, the U.S. Department of Commerce, the Congressional Research Service, and the U.S. State Department. Copies of the relevant excerpts were provided to me and Applicant with the updated administrative notice request at the hearing. Applicant did not object to any of the Government's facts for administrative notice. I held the record open after the hearing for Applicant to review the source documents and to propose some facts for administrative notice. No submissions were

¹ The SOR as drafted had a second paragraph 1.e, which was changed on the Government's motion to 1.g.

²The Government's formal request and the attached documents were not admitted into evidence but were included in the record. I agreed to take administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See *e.g.*, ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). It is noted that some of the source information relied on by the Government is not up to date. For example, the Government relied in part on a Fact Sheet of August 25, 2014. The India Fact Sheet was updated on October 9, 2015. See AE Z. The Country Information extract "Quick Facts" dated January 16, 2015, was updated on April 24, 2015. The Government relied on a Country Report on Terrorism for 2013 when the State Department's Bureau of Counterterrorism had released its report for 2014 in June 2015. Similarly, the Human Rights Report for 2014 concerning India was released on June 25, 2015, after the Government drafted its request for administrative notice but before the hearing. On August 7, 2014, the Congressional Research Service issued a report *India's New Government and Implications for U.S. Interests*. The updated reports of the U.S. State Department are available at www.state.gov. The Congressional Research Service report is available at www.crs.gov.

received by the December 9, 2015 deadline, and the record closed on that date. The facts administratively noticed are set forth in the Findings of Fact, below.

Summary of SOR Allegations

The amended SOR alleges that Applicant's father (SOR ¶ 1.a), mother (SOR ¶ 1.b), brother (SOR ¶ 1.c), mother-in-law (SOR ¶ 1.d), sister-in-law (SOR ¶ 1.e), and three brothers-in-law (SOR ¶ 1.f) are resident citizens of India. Additionally, Applicant is alleged to provide approximately \$14,000 annually in financial support to his father, sister-in-law, and brothers-in-law (SOR ¶ 1.g). Applicant denied SOR ¶ 1.b in that his mother died in January 2014. He admitted the Indian residency and citizenship of the other family members. He denied SOR ¶ 1.g in that he supported some family members in India for only three years and had no intent of providing them any financial help in the future.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 51-year-old chief scientist, who has been working for a defense contractor since June 2013. He applied for his first DOD security clearance in November 2013. (GE 1.)

Applicant was born in India to lifelong resident citizens of India. (GE 1; AE K; Tr. 36.) His father is a retired shopkeeper and active real estate broker. (Tr. 64, 72.) His mother, who died in late January 2014 (AE A), did not work outside the home. Applicant has an older brother, who is an ophthalmologist with an eye hospital in India. (AE F; Tr. 31-32, 72.) He is married to a gynecologist (Applicant's sister-in-law) with a medical practice in India. (AE G; Tr. 33.) Applicant had a younger sister, who is deceased. (GE 1.)

Applicant earned his bachelor's degree from a technological institute in India in May 1986. In August 1986, he came to the United States for graduate study at a public university. He earned his master's degree in October 1988 (AE DD) and his doctorate degree in May 1995 (AE EE) from the university. (Tr. 65-66.)

Applicant entered the United States on an Indian passport issued February 18, 1986, which he used for travel to Canada, Europe, Japan, the United Arab Emirates, and India. (GE 1.) Applicant and his spouse married in India in January 1991. (GE 1; AE M.) A native of Applicant's hometown in India (GE 1; AE L; Tr. 36-37), she moved to the United States on their marriage (Tr. 65), leaving behind her parents and three younger brothers (brothers or brothers-in-law #1, #2, #3) in India. (GE 1.) Applicant and his spouse have three children, a son now 23, and daughters now 20 and 15. Their children were born in the United States and have never held foreign citizenship or residency. (GE 1; AEs P, U, Z.)

Applicant began working as an assistant professor of computer science at a private university in the United States around July 1993. (AE FF.) He received several honors and awards for his teaching and scholarly research. Applicant petitioned through the university to immigrate to the United States based on his employment (an I-140 petition) with the endorsement of an associate professor in his department, who in November 1995 attested to her belief that the United States would benefit from his exceptional abilities as a professor and researcher. (AE UU.) Applicant was granted U.S. legal permanent residency. (Tr. 67.)

As a legal resident of the United States but citizen of India, Applicant renewed his Indian passport for another ten years in December 1995. He traveled on his Indian passport to the United Kingdom, Malaysia, Singapore, and the United Arab Emirates in 1999. (GE 1.) From October 1997 to August 2002, Applicant worked for a U.S. technology company in the business of global supply chain management. (AE GG.)

In late June 2002, Applicant and his spouse became naturalized U.S. citizens. Because India does not recognize dual citizenship, they effectively renounced their Indian citizenship when they acquired U.S. citizenship. (GE 1; Tr. 37-38.) They obtained U.S. passports, which they last renewed in May 2012. (GE 1; AEs N, O.)

Around August 2002, Applicant resigned from his previous employment to become an officer for a start-up company in the United States that he co-founded with the company's chief executive officer. (GE 1; AE II; Tr. 48.) In May 2007, he accepted an offer of a full-time employment as a director of software engineering in another state. (AE HH.) In December 2007, Applicant was selected to serve on the board of a local nonprofit corporation. (AE VV.) As a member of the nonprofit's board of directors, Applicant was invited in late March 2008 to attend a symposium on the issue of creating stronger and more sustainable community schools. (AE WW; Tr. 56-57.) After he was laid off in June 2011, Applicant co-founded another business. (Tr. 49.) He registered with the state as an agent for the company in December 2011. (AE JJ.) Work proved to be intermittent. (GE 1.)

In June 2013, Applicant accepted an offer of employment with his current employer, even though it required a long-distance relocation for himself and his family. (GE 1.) On November 18, 2013, he completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) in application for a security clearance for his present job. Applicant disclosed that he had telephone contact daily with his parents, weekly with his brother, and monthly with his mother-in-law in India. His sister and his father-in-law were deceased. Applicant also indicated that he or his spouse had telephone contact quarterly with his sister-in-law, monthly with her brother #3, and weekly with her brothers #1 and #2 in India. Concerning foreign financial interests, Applicant indicated that his spouse transferred \$5,000 in bank deposits from the United States to a foreign bank in July 2012. Additionally, he had provided financial support annually to his father and to his brothers-in-law #1 and #2 and rarely to his sister-in-law and to his brother-in-law #3. Applicant estimated that he sent a total of \$20,000 to his father, \$7,000 to his sister-in-law, \$20,000 to brother-in-law #1, \$10,000

to brother-in-law #2, and \$5,000 to brother-in-law #3. He listed foreign travel in the last seven years to Canada in March 2006 and Mexico in December 2012 for tourism, and to India in August 2010 and December 2010. (GE 1.) Applicant traveled to India after his father-in-law died in August 2010 (AE C; Tr. 81), in December 2013 when his mother was seriously ill (Tr. 82), and in late January 2014 when his mother died. (Tr. 81-82.) Applicant informed his employer about his trips to India in December 2013 and January 2014. (Tr. 85.)

Available bank records show that Applicant transferred \$2,500 to brother-in-law #1 in June 2012, \$16,490 to brother-in-law #2 in October 2013, \$6,589 to his sister-in-law in October 2013, and \$10,110 to brother-in-law #3 in April 2014. In November 2013, \$6,441 was transferred to another relative in India. (AE B.) Applicant provided more support than usual for his and his spouse's family members in India because of the deaths of his mother and his father-in-law, and the costs of his mother's care before her death. (Tr. 62, 80.) Applicant's brothers-in-law have repaid about one-third of the funds, which are deposited into a bank account that Applicant's spouse maintains in India. (AEs D, E; Tr. 30-31, 63.) As of November 2015, Applicant's spouse had the equivalent of approximately \$21,700 in assets in an Indian bank. (AE YY; Tr. 68.)

Applicant's mother-in-law is a retired schoolteacher. (Tr. 64.) She stayed for two months in the summer of 2015 with Applicant and his family in the United States. (Tr. 74.) Applicant's spouse calls her mother a couple of times per week, although Applicant described his contact with his mother-in-law as very rare, on occasion when his spouse calls her mother. (Tr. 75.) Applicant's brother-in-law #1 is a general manager for a tire manufacturer in India. (AE H; Tr. 33-34, 64.) Brother-in-law #2 is managing director for a private technology company that supports the local mining industry in India. (AE I; Tr. 34, 64.) Brother-in-law #3 is chief financial officer for a private logistics company that supports the diamond and gem industry in India. (AE J; Tr. 35, 64.) Applicant does not contact his brothers-in-law apart from joining his spouse's conversations with her brothers on occasion. She calls her brothers a few times a month. (Tr. 76.) Brother #3 visited them for two or three days while on a business trip to the United States. (Tr. 76.) Applicant's spouse just returned from a two-week trip to India to see her relatives the day before Applicant's hearing. (Tr. 77.) None of Applicant's or his spouse's relatives in India has ever worked for the Indian government. (Tr. 64.) While his and his spouse's relatives in India are aware of Applicant's employer, Applicant believes they do not know that he is seeking a DOD security clearance. (Tr. 79-80.)

As of November 2015, Applicant was in contact with his father in India by telephone once or twice a week. His contact with his brother in India has varied. As of November 2015, they were in contact a couple of times a month. Applicant's father stayed for over a month with Applicant and his family in the United States in the summer of 2015. Applicant's parents visited him in the United States every three or four years before his mother's death. (Tr. 84.) Applicant's brother has not been to the United States in the last ten years. (Tr. 73-74.)

Applicant and his spouse have lived in six different U.S. states over the years and bought homes in five of them. (Tr. 65.) They purchased their current residence in the United States in July 2014 for more than \$1 million with a mortgage of \$735,000. (AE LL.) Applicant earns a “comfortable” salary with his employer. (Tr. 67.) He received a merit increase in his annual pay in March 2015. (AE KK.) His spouse does not work outside the home, although she is considering starting her own business. (Tr. 70-71.) She has a master’s degree in economics earned in India. (Tr. 71-72.) Applicant and his spouse have checking and savings assets in the United States exceeding \$300,000 and another \$467,000 in retirement and investment accounts. (AEs NN-QQ; Tr. 51-54, 67.) Applicant intends to retire in his present state of residence. (Tr. 65-66.)

Applicant’s and his spouse’s children have all excelled academically from a young age, especially in mathematics. (AEs R, V, AA; Tr. 66-67.) Their son graduated as valedictorian from his high school (AE Q), and in May 2015 Magna Cum Laude in mathematics from a prestigious college. (AE S.) He is a full-time graduate student in mathematics at another university with a goal of obtaining his doctorate degree. (AE T.) Their older daughter, who completed high school in two years, is a joint-degree candidate for her bachelor’s and master’s degrees to be awarded in May 2016 at the university where their son earned his undergraduate degree. (AEs W, X; Tr. 66.) Their younger daughter is a freshman at a highly selective private high school. (AE BB; Tr. 67.)

The chief security officer for Applicant’s previous employer from June 2007 to June 2011 provided a letter of character reference for Applicant. He attests that Applicant handled sensitive information appropriately during his tenure there. Applicant was respectful of privacy, sensitive information, rules, and restrictions. (AE RR.) A former colleague of Applicant’s in that employment also attests to her experience of Applicant as an upstanding citizen, highly professional and trustworthy in carrying out his duties. (AE SS.) Similarly, Applicant’s former business partner from August 2002 to 2007 describes Applicant as “incredibly trustworthy and incorruptible.” Applicant maintained the privacy of their business dealings. He expressed certainty that Applicant will uphold his security clearance obligations. (AE TT.)

Administrative Notice

After reviewing U.S. government publications concerning India and foreign relations, I take administrative notice of the following facts:

India is the world’s largest democracy and its government generally respects the rights of its citizens. India’s Prime Minister, Narendra Modi, became head of the Indian government following May 2014 general elections that were considered free and fair, despite isolated instances of violence. Even with its free press and robust democratic political system, a lack of accountability for misconduct in all levels of government persists. Widespread corruption in the government and police forces, caste-based discrimination, and domestic violence and other abuses against women and children remain significant human rights problems. Separatist insurgents and terrorist groups

remain active in areas of conflict, such as Jammu and Kashmir, the northeastern states, and the Maoist (“Naxalite”) belt.

Anti-Western terrorist groups, including Islamic extremist groups on the U.S. government’s list of foreign terrorist organizations, continue to plan attacks that could take place in locations throughout India, including where U.S. citizens or Westerners are known to congregate or visit. Recent incidents include twin bombings in Hyderabad near a bus stop and commercial area in February 2013, which killed 17 and injured 119 bystanders; an explosion in Bangalore in April 2013; a series of explosions at a temple in Bodh Gaya in July 2013; and bomb blasts at an election rally in Patna Bihar in October 2013. An IED exploded outside a restaurant in Bangalore in late December 2014 killing one woman. India continues to address terrorism-related activities through existing statutes, but India’s efforts are hampered by poor interagency coordination and information sharing. Threats to safety from terrorists have led the U.S. State Department to advise U.S. citizens to practice good security when in India, and to avoid travel to areas of domestic conflict and to the India-Pakistan border. The Maoist extremist groups, which are active in rural areas of East Central and Southern India, are responsible for more terrorist attacks in the country than any other organization through an ongoing campaign of violence and intimidation. The Naxalites have not specifically targeted U.S. citizens, but they have attacked symbolic targets that included Western companies and rail lines.

India’s size, population, and strategic location give it a prominent voice in international affairs. India remains a leader of the developing world and is a member of several international organizations, including the United Nations, G-20, Association of Southeast Asian Nations (ASEAN) Regional Forum, International Monetary Fund, World Bank, and World Trade Organization.

The United States has had longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. As of 2000, India was listed as one of many countries actively engaged in economic intelligence collection and industrial espionage directed at the United States, although there is no evidence that India then or now tortures or abuses its citizens to extract economic intelligence. As of March 2006, there were 33 open cases under investigation with the U.S. Department of Commerce involving possible illegal exports to India by U.S. firms. In June 2008, the owner of an international electronics company was sentenced to 25 months in prison for conspiring to illegally export 500 controlled microprocessors and other electronic components to government entities in India that participate in the development of ballistic missiles, space launch vehicles, and combat fighter jets. A co-conspirator was sentenced in federal court to four years of probation and a \$5,000 fine. In September 2008, an Indian national and an Indian corporation were indicted in U.S. District Court on charges of illegally supplying the government of India with complex electronic instruments used in the research and development of launching and ballistic missile delivery systems. In November 2011, a senior scientist with a U.S.-based scientific company was arrested for stealing proprietary information and providing it to a relative in India who was starting up a competing company. In October 2012, the former

export control manager of a U.S.-based company involved in amplifier research pleaded guilty to exporting without required licenses microwave amplifiers with applications in military systems to China and India between 2007 and 2011. In April 2015, the former owner of two U.S.-based defense contracting businesses pleaded guilty to one count of conspiracy to violate the Arms Export Control Act by exporting to India between June 2010 and December 2012 sensitive military technical drawings without prior approval of the U.S. government.

The United States and India have divergent interests about Pakistan. Three full-scale wars and a constant state of military preparedness on both sides of the border have marked more than six decades of bitter rivalry between India and Pakistan. The United States strongly encourages India and Pakistan to work peacefully toward increasing their bilateral trade and increasing security along their shared border. Indian officials have long maintained that Pakistan's Inter-Services Intelligence Agency is at the heart of the region's problems with Islamic extremism while U.S. policy regards Pakistani security institutions as key to resolving such problems.

India has had a traditionally lenient stance on Iran, such as supporting Iran's right to the peaceful use of nuclear energy, which has been a source of friction between India and the United States. In recent years, India has moved to more fully embrace the international sanctions against Tehran. Under pressure from the United States, India has decreased its imports from Iran in recent years.

Russia had been India's major benefactor for the first four decades of its independence, with India importing the bulk of its military hardware from Russia. The United States and India have different strategic interests with regard to Russia's involvement in the Ukraine, which India implicitly approved by strongly opposing sanctions on Russia for its aggression in Ukraine.

Even with these concerns, the United States recognizes India as key to its strategic interests. The two countries share common values in the rule of law, respect for diversity, and democratic government. They share security perspectives on China and Asia with regard to the balance of power, on terrorism, Afghanistan, and maritime issues. They have a common interest in the free flow of global trade and commerce, including through vital sea lanes in the Indian Ocean. Since 2002, the United States and India have held increasingly substantive combined exercises involving all military services. In June 2005, the two countries signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. In July 2009, the Obama Administration launched a "Strategic Dialogue" calling for collaboration on energy, trade, education, and counterterrorism issues. In 2015, it expanded to become the "U.S.-India Strategic and Commercial Dialogue," to strengthen cooperation in these areas as well as on climate change. People-to-people linkages between India and the United States through education and private business opportunities have come to define what the U.S. State Department considers the "indispensable relationship" between the two countries. The United States is one of India's largest trade and investment partners. The countries are

continuing efforts to deepen the economic relationship and are committed to working collaboratively to help ensure mutual energy security, combat global climate change, and develop low-carbon economies. The United States supports a reformed United Nations Security Council that includes India as a permanent member.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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 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 that the applicant may deliberately or inadvertently fail to 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. 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

The security concern relating to the guideline for foreign influence is set out in 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.

Applicant has foreign connections that present a potential risk of divided loyalties or undue foreign influence. Applicant’s father, brother, brother’s spouse, and his spouse’s mother and spouse’s three brothers, are resident citizens of India. Applicant has no financial interest in India, but his spouse has approximately \$21,700 in assets in a bank in India. Four disqualifying conditions under AG ¶ 7 are potentially applicable:

- (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;
- (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; 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.

The salient issue under AG ¶¶ 7(a), 7(b), 7(d), and 7(e) is whether there is substantial evidence of a “heightened risk” of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

India and the United States have a “strategic partnership” of increasing importance to both countries. They have common values in the rule of law, respect for diversity, and democratic government and share interests in promoting global security, stability, and economic prosperity. India is an ally in counterterrorism efforts. The military-to-military relationship has grown in the last decade, and the United States has become one of India’s largest trade and investment partners. However, even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, “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. See ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). India was among the most aggressive collectors of U.S. economic intelligence as of 2000. There is no recent report showing direct involvement by the Indian government targeting the United States. However, U.S. government contractors have been implicated in economic espionage activity in the United States to benefit India as recently as December 2012. The United States remains concerned about India’s inadequate protection of U.S. intellectual property and its support of Russia and Iran.

There is no evidence that Applicant’s and his spouse’s close family members in India have been targeted or pressured. Nothing about his family members’ previous or present occupations or activities creates a heightened risk. To Applicant’s knowledge, none of them had a direct affiliation with the Indian government, or any military, security, or intelligence responsibilities. Considering the democratic nature of the Indian government and society, it may be unlikely that the Indian government would resort to coercive means to obtain sensitive information. India faces threats by terrorist groups that have demonstrated a willingness and ability to strike civilian targets, including places frequented by foreign tourists. A distinction must be made between the risk to physical security that may exist and the types of concern that rise to the level of compromising Applicant’s ability to safeguard national security. Since the Mumbai

attacks in 2008, India has taken security measures designed to combat and minimize the risk presented by terrorism.

Yet, there are several factors, which collectively if not on their own create a heightened risk of undue foreign influence. Applicant calls his father once or twice a week. He speaks to his brother a couple of times a month. Applicant's spouse has telephone contact with her mother a couple of times per week. Her contact with her brothers is less frequent at a few times per month. Applicant's father and his mother-in-law both visited Applicant and his family in the United States in the summer of 2015. While Applicant has not traveled to India since his mother died in January 2014, his spouse returned on November 17, 2015, from a two-week visit in India. Applicant has provided some \$42,130 (including service charges) in financial support to his and his spouse's family members in India since June 2012. As evidenced by the frequency of their telephone calls to family members in India, their travel to India for family funerals and visits, and their financial support, Applicant on his own and through his spouse has close bonds to and frequent contact with family members in India. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." See ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002). Applicant has not rebutted that presumption. AG ¶¶ 7(a), 7(b), and 7(d) apply. His spouse's bank assets in India are minimal when compared to Applicant's and his spouse's overall net worth in the United States. AG ¶ 7(e) applies, if at all, only because of the financial support that has been provided to family members in India through her bank account in India.

Concerning potential factors in mitigation, AG ¶ 8(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.," is difficult to satisfy, given the ongoing risk of terrorist activity by rogue elements in India, although there is no evidence that Applicant's or his spouse's family members have been targeted or victimized.

There is nothing unusual about the nature and extent of Applicant's contacts with his and his spouse's family members in India. Even so, AG ¶ 8(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," cannot reasonably apply in light of the close parental bonds involved and the regularity of the contacts.

A heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(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." Applicant denies any loyalty to his native India, and he demonstrated a clear

preference for the United States by acquiring his U.S. citizenship, knowing when he did so that he was effectively renouncing his citizenship with India. Yet, Applicant's parental and sibling ties in India cannot reasonably be characterized as "so minimal" to not pose a risk of a conflict of interest.

However, Applicant has persuaded me that he can be expected to resolve any conflict of interest in favor of the United States, where he has resided since August 1986. He obtained his master's and doctorate degrees in the United States. He married an Indian citizen, who joined him in the United States in 1991, and together they took the oath of naturalization in June 2002.

By the time Applicant earned his doctorate degree in May 1995, he had established a reputation as a talented researcher and teacher. He has since worked for companies in the United States or co-founded businesses in the United States. Due to his professional success, he and his spouse have been able to buy a succession of homes in the United States and amass a net worth exceeding \$1 million in the United States. Their three children are native U.S. citizens, who have excelled academically in the United States. Applicant was involved in his previous community, where he served on the board of a nonprofit organization. He intends to retire in his present state of residence and does not foresee having to support his relatives in India in the future. (Tr. 65-66.) There is nothing about his present lifestyle that is inconsistent with his American citizenship. His spouse's bank deposits in India are unlikely to result in a conflict, when considering their minimal value relative to Applicant's and his spouse's assets in the United States and their routine nature. AG ¶ 8(f) applies to her financial assets in India. AG ¶ 8(f) provides:

(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.

As with many immigrants to the United States, Applicant and his spouse have ongoing ties of affection and obligation to immediate family members. It would be unreasonable to expect otherwise. Applicant has not sought to maintain other ties to India, such as owning property in India, holding Indian citizenship, or possessing an Indian passport, which could cast some doubt about his commitment to the United States. The foreign influence concerns have been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).³ Applicant has family ties to India that raise concerns of foreign influence.

³ The factors under AG ¶ 2(a) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

Applicant has established firm roots in the United States, where he has used his considerable acumen to benefit the United States through his work as a defense contractor employee since June 2013. Colleagues in previous employments found Applicant to be honest and trustworthy. Applicant reports, with no evidence to the contrary, that he reported his trips to India that occurred in December 2013 and January 2014 around his mother's death to his employer. Applicant could conceivably use his knowledge and skills to his benefit in India. Yet he intends to remain in the United States. He is not likely to jeopardize the comfortable life that he and his immediate family enjoy in the United States or his children's career opportunities in the United States. After considering all the evidence, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance.

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 B: FOR APPLICANT

Subparagraphs 1.a-1.g: 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.

Elizabeth M. Matchinski
Administrative Judge

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.