



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-02179

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Catie E. Young, Attorney At Law  
Griffith, Young & Lass

February 9, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on February 11, 2014. (Government Exhibit 1). On July 29, 2014, the Department of Defense (DOD) pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on August 9, 2014, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on October 27, 2014. A notice of hearing was issued that same day, scheduling the hearing for December 3, 2014. The Government offered one exhibit, referred to as Government Exhibit 1, which was received without objection. The

Applicant presented twenty-nine exhibits, referred to as Applicant's Exhibits A through CC, which were admitted into evidence without objection. She also testified on her own behalf. The transcript of the hearing (Tr.) was received on December 15, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in India. (See Tr. p. 17.) There was no objection from Applicant. (See Tr. p. 17.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR testimony and the exhibits. The Applicant is 29 years of age and married. She has two Bachelor of Science degrees, one in Technical Management, the other in Electronics and Communications. She is employed as a Test Engineer by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline. She has been working for her current employer since June 2013. She has received a number of awards and recognitions as well as a pay raise since beginning her employment. Applicant has never applied for or held a security clearance before.

Applicant was born in India in 1985. She grew up in India, and attended college there, where she earned her Bachelor's of Engineering in Electronics and Communication. Her uncle, who lived in the United States, had told her about the quality of life and the great opportunities available here. Applicant knew that she wanted to move to the United States to become a successful engineer, establish herself, and live the good life. (Tr. pp. 41-42.) In April 2006, Applicant immigrated to the United States with her parents and younger brother. Her older sister also wanted to come to the United States, but was unable to since she was over the age of 21, and precluded from doing so, according to the immigration laws.

Not long after arriving in the United States, by June 2009, Applicant had obtained her Bachelor's of Science in Technical Management. (Applicant's Exhibit A.) She became a naturalized United States citizen in June 2011. (Tr.p. 64.) She formally renounced her Indian citizenship in November 2011. (Applicant's Exhibit B.) She obtained her drivers license, and an American passport that she uses to travel outside of the United States. Since immigrating here, she has traveled to India on three occasions to visit. Each time, she used her American passport. (Applicant's Exhibits C and D.)

Applicant currently resides in the United States with her parents and her brother who are all United States citizens. She now has about twelve extended family members who reside in the United States that include her husband, her mother, her father, her brother, her uncle, her uncle's wife and their two sons, her grandmother, and her father's sister's family or her aunt, her aunt's husband, their son, their son's wife and their daughter. (Tr. p. 62 and Applicant's Exhibits F, G and H.) All of her family members are United States citizens, except three. (Tr.p. 63.)

Applicant's older sister is a citizen and resident of India. She is currently being sponsored by the Applicant and Applicant's father to come to the United States. In the beginning, Applicant spoke to her sister in India a couple of times a month. After her sister got married and started her own family, Applicant's contact with her sister became less frequent to once every three weeks or so. (Tr. p. 47.) They talk about casual matters, and nothing related to Applicant's work. Applicant's sister has no affiliation with the Indian Government. (Tr. p. 48.) She is a housewife and she has one son. Her husband is a marketing manager who has no affiliation with the Indian Government. Applicant may speak to him when she calls her sister on holidays.

In March 2012, Applicant got married to an Indian citizen, in India. Her husband came to the United States on an immigrant visa in February 2013. Applicant's husband now holds a green card and a permanent residency card. After three years, in February 2016, he will apply to be a naturalized citizen of the United States. ( Tr. p. 50.) After Applicant's husband receives his citizenship, he plans to file a petition for his parents to come.

Applicant's husband's family members are residents and citizens of India. They too would like to come to the United States. They include, Applicant's father-in-law, mother-in-law, brother-in-law and sister-in-law. Her father-in-law is now retired. At one time he was employed with the government of the state where he lives as an executive engineer for the irrigation department. (Tr. p. 51.) She believes he receives a state pension. Applicant used to speak with her in-laws a couple of times a month, but since her husband now lives in the United States, she only speaks to them once a month or so on holidays. (Tr. p. 52.) Applicant's mother-in-law is a housewife, who was never employed outside of the home. She has no affiliation with the Indian Government. Applicant speaks to her about every three weeks or so and only about her health and casual matters. Applicant has contact with her sister-in-law and brother-in-law about once every six weeks or so. (Tr. p. 80.) Her sister-in-law is a housewife with one son. Her brother-in-law is a stockbroker, and is in no way affiliated with the Indian

Government. None of her in-laws have any knowledge of the details of her job or that she is applying for a security clearance or even what a security clearance is. (Tr. p. 53.)

Applicant owns nothing in India. All of her assets are in the United States, which include several bank accounts, a retirement account, and two properties. (Applicant's Exhibits I, J, K, L, M and N.)

Applicant credibly testified that she would never do anything to jeopardize the national security of the United States or the men and women who serve our country's military. (Tr. p. 81.) If she were ever confronted with a situation where she was contacted or threatened by the government of India or any related official, she would immediately report it to her security department, as she has been briefed to do so. (Tr. pp. 56-57.)

Applicant's performance evaluation indicate that she consistently exceeds expectations, and she received a \$5,000 pay increase effective May 31, 2014, for her performance. (Applicant's Exhibits Q and R.)

Letters of recommendation from professional associates and friends of the Applicant from both the United States and India, and a letter from her brother, collectively indicate that Applicant is a highly focused, intelligent, honest, hardworking, trustworthy individual. She is an upstanding citizen of the United States and a dedicated employee of her company. She has excellent communication skills and a strong moral compass. She strictly follows all rules and regulations and takes the responsibilities of her job very seriously. They believe that she is capable of properly handling sensitive information and is recommended for a security clearance. (Applicant's Exhibits T, U, V, W, X, Y, Z, AA, BB and CC.)

I have considered the information provided by the Government on India. India is among the most active collectors of U.S. economic and proprietary information. There have been numerous, recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India and private companies and individuals in India. In March 2008, a Minnesota based company pleaded guilty to submitting false export licenses to the Commerce Department in connection with the shipment of nuclear testing equipment to an entity in India. That same year, the Department of Justice brought two cases against defendants charged with illegally exporting controlled products to Indian government entities involved in the development of ballistic missiles, as well as space launch vehicles and combat fighter jets. More recently, in January 2013, the former export control manager of a Pennsylvania based company pleaded guilty to the illegal, unlicensed export to India and China of over 57 microwave amplifiers, products that have military applications. There are other cases concerning illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India that have included: (1) military night vision components; (2) vibration amplifiers and cable assemblies, for use in both military and civilian aircraft; (3) manufacturing equipment related to improving the accuracy of strategic ballistic missiles, which the U.S. Government deemed to be an

unacceptable risk of diversion to programs for the development of weapons of mass destruction or related delivery systems. There are a number of terrorist groups that operate in the Indian state of Jammu and Kashmir, particularly along the Line of Control separating Indian and Pakistani-controlled Kashmir. The State Department strongly recommends avoiding travel to the states of Jammu and Kashmir.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. *The Concern.* 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.

### Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion; and

7. (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.

Conditions that could mitigate security concerns:

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.;

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; and

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Conditions 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;* and 7.(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 apply. However, Mitigating Conditions 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.; 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; and 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 also apply.*

Applicant has lived the American dream. She immigrated to the United States and obtained her education, a good job, properties, family and friends. Most of her family are now United States citizens who reside here. Those family members that are residents and citizens of India are few in number. Her older sister is currently trying to immigrate to the United States. Her father-in-law, mother-in-law, brother-in-law and sister-in-law who are residents and citizens of India in no way pose a security risk to the Applicant. Applicant has limited contact with them, and they do not have any knowledge of what she does, where she works, or that she is applying for a security clearance or its ramifications. (Tr. pp. 45-46.) They have no affiliation with the Indian government that could create any risk. Her limited conversations with them are about their well being. In fact, they all hope to immigrate to the United States sometime in the near future.

It is noted that the current political situation in India elevates the cause for concern in this case. In this case, the Applicant has everything to lose and nothing to gain by engaging in any improper foreign contact with India. Everything that he has worked for and everything that she stands for will be destroyed. Although the Applicant has only resided in the United States a little over eight years, most of her immediate and extended family members reside in and are citizens of the United States. She has worked hard to achieve her education, her work, her properties, her social life and friends here. Her long-standing ties and deep relationships are here. All of her financial assets are here. Her husband is here and they are planning on establishing their family in the United States. Applicant has adopted the American culture and its values. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that



the person may properly safeguard classified information. The Applicant is an intelligent, test engineer with an excellent work record for the Defense Department. Her favorable evidence, including her performance evaluation and letters of recommendation from those that know her well, in addition to his overall intelligence and integrity gleaned from her own testimony, all demonstrate her trustworthiness. She has presented sufficient evidence in mitigation to demonstrate that she is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

- Subpara. 1.a.: For the Applicant
- Subpara. 1.b.: For the Applicant
- Subpara. 1.c.: For the Applicant
- Subpara. 1.d.: For the Applicant
- Subpara. 1.e.: For the Applicant
- Subpara. 1.f.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge

