



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 14-02200
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

05/08/2015

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns regarding family members and interests in India. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On August 25, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under 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 within the DOD on September 1, 2006.

In a letter notarized on September 9, 2014, Applicant admitted six of the seven allegations raised in the SOR and requested a hearing. I was assigned the case on January 12, 2015. Inclement weather led to the cancellation of the original hearing set for March 19, 2015. The Defense Office of Hearings and Appeals (DOHA) rescheduled the hearing for April 9, 2015. The hearing was convened as rescheduled.

The Government offered four exhibits (Exs.), including a request for administrative notice concerning certain facts pertaining to the Republic of India. With no objections, I accepted the documents as Exs. 1-4. Applicant gave testimony, introduced two witnesses, and offered three documents, which were accepted into the

record as Exs. A-C without objection. The transcript (Tr.) of the proceeding was received on April 20, 2015. The record was then closed. Based on a thorough review of the case file, I find that Applicant carried his burden in mitigating security concerns arising under Guideline B.

### **Request for Administrative Notice**

Department Counsel submitted Requests for Administrative Notice regarding certain facts about the Republic of India (India). Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (*citing* ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from Government reports. Various facts pertaining to this nation were derived from the offered request and its attachments.

India is a sovereign, secular, democratic republic. It is a multiparty, federal parliamentary democracy with a bicameral parliament and a population of approximately 1.2 billion. Since gaining independence in 1947, India has had a tumultuous history, and continues to experience terrorist and insurgent activities.

The Indian government generally respects the rights of its citizens. The most significant human rights problems still existent are prison and security force abuses including extrajudicial killings, torture, and rape. Authorities infringe on citizens' privacy rights, and corruption exists at all levels of government.

India, along with other countries, has been involved in criminal espionage and cases involving violation of U.S. export controls. Cases have involved the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment which were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their delivery. Governmental and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

Despite past differences regarding India's nuclear weapons program and its cooperation with Iran in some policy areas, the United States recognizes India as key to its strategic interests and has sought to strengthen the relationship. The two countries are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, fighting terrorism, and creating a strategically stable Asia.

India and the United States are partners in the fight against global terrorism. A Bilateral Counterterrorism Cooperation Initiative was launched in July 2010. As of 2011, the number of terrorist-related deaths had decreased. The State Department's Anti-Terrorism Assistance program has conducted scores of training courses for Indian law enforcement officials. In 2011, a U.S.-India Homeland Security dialogue was established to foster cooperation on various law enforcement issues. As of November

2012, counter-terrorism cooperation with India was described by the Obama administration as a “pillar of the bilateral relationship” between the two countries.

### **Findings of Fact**

Applicant is a 38-year-old man who was born and raised in India. He received his undergraduate degree in that country, then moved to the United States in 1998. He completed a master’s degree in 2000, then was recruited by a defense contractor. Still with the same employer, he has risen to the level of lead associate. Applicant became a naturalized citizen in 2013. He is married and has one young child, who was born in the United States. At work, Applicant routinely exceeds professional expectations. His employers find him to be moral, ethical, and of good character. Applicant’s witnesses note that he is hard-working, trustworthy, and well-rounded.

Applicant has multiple family members who remain citizens of India, residents of India, or both. These include Applicant’s mother, father, mother-in-law, and father-in-law, as well as aunts, uncles, and other extended family members of both Applicant and his wife. All of these kin are citizens and residents of India. Applicant’s brother-in-law and sister-in-law are citizens of India residing in the United Arab Emirates (UAE). Applicant also has a cousin who resides in the United States, but remains a citizen of India. None of Applicant’s relatives have a connection to the government or military of India, and none are connected with terrorism. None know the specifics about Applicant’s work, or that he has applied for a security clearance. (Tr. 43-44)

Although it only has a nominal balance of about “a couple of hundred dollars,” Applicant maintains a bank account in India. (Tr. 41) He uses it as a conduit through which he can send his parents money on occasion, and so he has access to pocket money when he visits. (Tr. 38) Applicant formerly owned a parcel of property once valued at about USD \$150,000, which he has since sold at a significantly reduced price.

Applicant’s parents are about 70 years old. They are retired professors who worked for private-sector institutions. Applicant visits them every few years and speaks with them by telephone every week. (Tr. 34, 42) Applicant’s father-in-law is a private sector physician and his mother-in-law is a homemaker. Applicant and his wife visit his in-laws when they are in India, and speak to them weekly by telephone from the United States. Applicant’s in-laws have visited them in the United States.

Applicant’s sister-in-law is a homemaker and his brother-in-law works for a private shipping company. They have never been to the United States and do not have any connections with a foreign government or military. They have lived in the UAE for over a decade due to Applicant’s brother-in-law’s job. (Tr. 36) Applicant’s cousin, who is an Indian citizen residing in the United States, speaks with Applicant about every three months. He is a private sector software engineer. Applicant’s contact with his other relatives in India is sporadic and they know little of his professional life.

In the United States, Applicant has worked for the same, well-recognized employer for 15 years. He contributes to his company’s 401k plan. Many of his professional associates have also become neighbors and friends. Applicant owns a

house in an upscale area that is currently rented. It is valued at nearly \$450,000. Presently, however, Applicant and his family rent a dwelling in a different area so they can be closer to their child's school. Applicant leases two automobiles for his family's use. Applicant owns investment property in his state valued at about \$70,000. He maintains both a bank account with a varying balance, and his 401k retirement account has grown to a balance of approximately \$300,000. Like Applicant, Applicant's wife is employed in a stable position. She has a 401k balance of about \$50,000. They are presently considering the purchase of a home valued at \$430,000.

Applicant considers the United States to be his home. It is his intent to raise his child, and to retire here with his wife. His only interest in returning to India for visits is to see his family occasionally. He has no interest in returning to India to reside.

### **Policies**

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 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 the applicant may deliberately or inadvertently fail to safeguard 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).

## **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 ties of affection, independently or through his wife, for his parents, in-laws, and a cousin who are residents and/or citizens of India. He has lesser, but familial connections with various extended members of his family in India. He maintains a nominal bank account balance in India. Until recently, he owned property in India. Given these facts, disqualifying conditions AG ¶¶ 7(a), (b), and (e) apply:

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

AG ¶ 7(b) connection 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

AG ¶ 7(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.

In finding disqualifying conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk

greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist activities have transpired within India. This fact is sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an Applicant may be subject to coercion or undue influence when a third party pressures or threatens an Applicant's family members. Under these facts, while unlikely, a third party coercion concern potentially exists in India. Therefore, there is sufficient evidence to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, and find the following apply:

AG ¶ 8(a) the nature of the relationship 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.;

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 interests in favor of the U.S. interests; and

AG ¶ 8(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

Here, Applicant's parents, parents-in-law, and a cousin live in and are citizens of India; his siblings-in-law are citizens of India living in the UAE. More distant relatives also are residents and citizens of India. None of the relatives have a nexus to a foreign government or military, or know much about Applicant's work or personal activities. These relatives worked or work in the private sector. They appear to be little more than mainstream individuals.

With these factors in mind, the nature of the foreign country must be considered in evaluating the likelihood of exploitation. The United States and India have a long-standing, stable relationship, and share common strategic goals. India is a democracy and a partner in combating terrorism. There is no evidence it coerces its citizens in order to manipulate foreign kin. Given the individuals involved and the nature of the country involved, it is unlikely that it would exploit Applicant or his relatives based on

their relationship. It is also unlikely that Applicant would have to choose between the interests of his family in India and the interests of the United States. AG ¶ 8(a) applies.

Moreover, Applicant has developed strong ties to the United States, which weigh in his favor when evaluating the question of exploitation or potential conflicts of interest based on ties to India. He has lived in the United States for nearly two decades. This is where he completed his graduate studies, married, began his career, and started his family. He has relatively extensive financial investments here. He has no intention to return to India to live. He is already building toward a future for his family and a retirement in the United States. In short, the passage of time has weakened Applicant's links to India in favor of strengthening his ties in the United States. Telephone calls and occasional trips to India have taken a clear second place to Applicant's day-to-day professional and family life here. There is insufficient evidence to conclude Applicant's relationships abroad are so deep and longstanding as to outweigh these factors. I conclude that Applicant would choose his more significant U.S. ties over his foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

Finally, Applicant has sold his property in India, thus reducing, if not eliminating, its significance as a foreign influence. What remains is a bank account with a nominal balance. It is maintained solely as a conduit for him to send occasional sums of money to his parents, and for him to maintain a modest amount of pocket money on his occasional visits. Such a minimal balance is insufficient to sustain security concerns. Consequently, AG ¶ 8(f) applies.

### **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). 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 all the facts and circumstances surrounding this case. I incorporated my comments under the three guidelines at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guideline, but some warrant additional comment.

Applicant is a 38-year-old senior associate working for a well-known defense contractor. He has worked for that same employer for 15 years. Applicant moved to the United States in 1998 and has since earned a master's degree, married, had a child, bought a home, made investments, and become a naturalized U.S. citizen. It is his intent to raise his child in the United States and to retire with his wife in this country. In contrast, Applicant makes occasional trips to see his parents and other relatives in India, where his only other connection is a modest bank account with a balance of only a couple of hundred dollars. These relatives have no nexus with a foreign government, military, or terrorist movement. They are everyday folk who know little of Applicant's

work and family life. Applicant's loyalties are clearly weighted in favor of his family and life in the United States.

When disqualifying conditions are raised, the burden is placed on an Applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant presented sufficient information about himself, his family, his foreign bank, and the country at issue to mitigate foreign influence security concerns. Clearance is granted.

### **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, 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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge