



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



In the matter of:)
)
-----) ISCR Case No. 14-02277
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

06/10/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant and his spouse are close to their parents, who are residents and citizens of India. He has frequent contact with his parents and usually visits them or they visit him every other year or so. Applicant’s property in India has an estimated fair market value of \$2,500,000, and his property in the United States is valued at about \$1,400,000. Although foreign preference concerns are mitigated, foreign influence security concerns are not fully mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On December 6, 2013, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On November 5, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to him, alleging security concerns under Guidelines B (foreign influence) and C (foreign preference) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with national security to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On November 20, 2014, Applicant responded to the SOR. (HE 2) On March 9, 2015, Department Counsel was prepared to proceed. On March 19, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 10, 2015, DOHA sent notice of the hearing, setting the hearing for May 13, 2015. The hearing was held as scheduled. I received the transcript of the hearing on May 22, 2015.

Procedural Rulings

At the hearing, Department Counsel offered three exhibits, and Applicant offered six exhibits. (Tr. 16-19; Government Exhibit (GE) 1-3; AE A-F) There were no objections, and I admitted all proffered exhibits into evidence. (Tr. 16, 19-20; GE 1-3; Applicant's Exhibit (AE) A-F)

Department Counsel requested administrative notice (AN) of facts concerning India. (Tr. 16-17; AN Request) Department Counsel's request listed supporting documents to show detail and context for those facts. (AN Request) There were no objections about the accuracy of Department Counsel's proffered facts, and I granted Department Counsel's request. (Tr. 17) The AN request is quoted at pages 4-6, *infra* (first paragraph added, some punctuation and internal footnotes omitted, and minor grammatical errors corrected).

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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a through 1.c and 2.a, and he provided mitigating information. (HE 2) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

Applicant is a 46-year-old manager of about 700 engineers for a company with operations in several countries. (Tr. 6, 15) He was born and educated in India. (Tr. 27) Applicant's annual income is \$250,000 to \$350,000, and his spouse is an engineer, who earns about \$110,000 annually. (Tr. 47) In 1985, he graduated from high school. (Tr. 5) In 1989, he received a bachelor's degree in engineering in India, and in 2012, he was awarded a masters of business administration from a U.S. university. (Tr. 6)

In 1998, Applicant married in India, and his two children, who are ages 10 and 13, were both born in the United States. (Tr. 7, 27, 28) He has not served in the United States or Indian militaries. (Tr. 7)

In 1993, the Indian Government released nine militants, who had been holding 170 hostages, and permitted them to travel to Pakistan, even though they had murdered two people. (AE C) This resolution convinced Applicant that he should immigrate to the United States. (Tr. 21) He preferred the principles in the United States over those of India. (Tr. 26) In 1995, he immigrated to the United States, and in 2006, he and his spouse became naturalized U.S. citizens. (Tr. 22, 26, 28; AE A)

In 2006, Applicant obtained a permanent Indian visa. (AE D) Applicant maintains an Indian lifetime visa because his parents are elderly, and he wants to be able to visit them on short notice. (Tr. 22; AE D) His permanent visa enables him to visit India without applying for a visa. (AE D) On July 2, 2010, he renounced his Indian citizenship, and he surrendered his Indian passport. (Tr. 20; AE B) He visited India in 2012, in the summer of 2014, and in February 2015. (Tr. 28-30) One visit was for personal reasons, and two visits were for business reasons. (Tr. 30) Typically over the last twenty years, he visited his parents every other year. (Tr. 32) He plans to visit them next year. (Tr. 32) His father is a retired farmer, and his mother is a homemaker. (Tr. 32-33) He calls his parents on a weekly basis. (Tr. 32, 34) His parents visited Applicant in the United States three or four times and most recently in the summer of 2014. (Tr. 32-33) He does not provide financial support for his parents. (Tr. 34) His relatives in India are financially well off, and they do not need his financial support. (Tr. 45)

Applicant's father-in-law runs an agricultural commodities business in India and his mother-in-law is a homemaker. (Tr. 35-36) Applicant's parents-in-law visited Applicant and his spouse in the United States twice, and Applicant visits them when he goes to India. (Tr. 35) He communicates with his parents-in-law about every two weeks. (Tr. 39)

Applicant's two sisters live in India, and both of them are homemakers. (Tr. 36-37) One brother-in-law is a construction contractor, and the other is an accountant. (Tr. 37) When Applicant goes to India for pleasure, he visits his sisters, and he communicates with them about once a month. (Tr. 38) Applicant's brother is a U.S. citizen and resident. (Tr. 46)

From 2001 to 2009, Applicant purchased land in India as an investment. (Tr. 23-24, 44) His properties in India are valued at about \$2,500,000. (Tr. 41, 42, 44) There are no mortgages on his properties in India. (Tr. 43)

Applicant owns his home in the United States; however, his mortgage is about \$1,000,000. (Tr. 41) His equity in his U.S. home is about \$700,000. (Tr. 41) His other U.S. assets, including bank accounts, IRAs, and 401(k) accounts total about \$700,000. (Tr. 42-43) His total net worth in the United States is about \$1,400,000.

India

India is a multiparty, parliamentary democracy with a population of approximately 1.2 billion people. The U.S. and India share common values including the rule of law, respect for diversity, and democratic government. The U.S. Department of State reported in 2012 that bilateral defense and counterterrorism cooperation between the U.S. and India had grown to reach unprecedented levels. In 2009, the U.S. and India launched the U.S.-India Strategic Dialogue, which is a bilateral forum focused on strengthening cooperation between the two countries in several areas, including energy, climate change, trade, education, and counterterrorism. The U.S. supports a reformed United Nations Security Council that includes India as a permanent member. The U.S. is one of India's largest trade and investment partners. Bilateral trade in goods and services between the two countries exceeded \$86 billion in 2011.

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

In its 2009-2011 Report to Congress, the Office of the National Counterintelligence Executive noted that sensitive U.S. economic information and technology are targeted not only by Chinese and Russian intelligence services, but also by dozens of other countries. The Report states that: "Some U.S. allies and partners use their broad access to U.S. institutions to acquire sensitive U.S. economic and technology information, primarily through aggressive elicitation and other human intelligence (HUMINT) tactics. Some of these states have advanced cyber capabilities.

According to the U.S. Department of Justice, 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 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. In November 2011, an employee of a Utah-based scientific company was charged with stealing company proprietary information for use 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. In 2008, the Department of Justice brought two separate 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.^[2]

Other such cases concerning the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India 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 with nuclear capabilities;” and, multiple cases involving illegal export of products presenting what 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.

India and Pakistan have been locked in a tense rivalry since the partition of the subcontinent following independence from Great Britain in 1947. The principal source of contention has been Kashmir, whose Hindu leadership chose to join India at the time, despite a Muslim majority population. India and Pakistan have engaged in three full-scale wars between 1947 and 1971, and as recently as 1999, a Pakistani military intrusion into Indian-held territory nearly led to another full-scale war. The Indian states of Jammu & Kashmir remain unstable, and a number of terrorist groups operate there, 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.

India continues to experience terrorist and insurgent activities that may affect U.S. citizens. Anti-Western terrorist groups, some on the U.S. Government’s list of foreign terrorist organizations, are active in India, including Islamist extremist groups such as Harkat-ul-Jihad-i-Islami, Harakat ul-Mujahidin, India Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. India remains subject to violent terrorist attacks and continues to be one of the most persistently targeted countries by transnational and domestic terrorist groups. Most notably, in late November 2008, terrorists coordinated attacks on multiple locations in Mumbai, targeting areas frequented by Westerners and killing at least 183 people, 165 of whom were civilians, including 6 Americans. Subsequent terrorist attacks in 2012 and 2013 underscore that India remains targeted.

According to the U.S. Department of State’s 2013 Human Rights Report, the most significant human rights problems in India were police and security force abuses, including extrajudicial killings, torture, and rape; widespread corruption at all levels of government, leading to denial of justice; and separatist, insurgent, and societal violence. Other human rights problems included disappearances, poor prison conditions that were frequently life threatening, arbitrary arrest and detention, and lengthy delays or the denial of justice. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remained serious problems. Widespread impunity at all levels of government remained a serious problem. Investigations into individual cases and legal punishment for perpetrators occurred, but in many cases a lack of accountability due to weak law enforcement, a lack of trained

² There is no evidence that Applicant has been involved in any criminal conduct, and, accordingly this paragraph has very limited security relevance to this case.

police, and an overburdened, under-resourced court system created an atmosphere of impunity.

The United States and India share a number of security perspectives, including those on China and Asian balance of power calculations, terrorism, Afghanistan, maritime issues, and weapons of mass destruction. However, on a practical rather than strategic level, considerable differences remain, particularly as to Pakistan and Iran.

India's relations with Iran have traditionally been positive. While India has reluctantly supported some measures against Tehran, it has been careful not to break ties, since to do so would increase India's energy dependence on the Arab Persian Gulf states. Since 2008, imports into India from Iran have dropped from 16% to 10% of India's total import volume, and pressure from the U.S. has spurred India to plan an additional 11% reduction in 2013. India remains firm in protecting its diplomatic and trade ties with Iran not only to demonstrate its strategic autonomy, but also to ensure diversity in its energy resource providers. India emphatically supports Tehran's right to the peaceful use of nuclear energy, though they are keen to prevent the emergence of another nuclear power in the region. India's traditionally lenient stance on Iran has been a perennial source of friction with the United States.

Concerning Pakistan, U.S. policy and India policy have often been at odds. Although the current Indian government has actively engaged in a peace process with Pakistan's government, Indian officials have long maintained that Pakistan's security services, in particular its Inter Services Intelligence agency, are at the heart of the region's and perhaps the world's problems with Islamic extremism—a perspective that places India at odds with the U.S., whose policy has conceived of Pakistan's security institutions as key players in resolving such problems, even as U.S. doubts persist.

India had long-standing military supply relationships with the Soviet Union, and Russia remains India's largest supplier of military systems and spare parts. India has remained reticent to discuss its nuclear security measures or allow inspections. India has also refused to accede to the nuclear Non-Proliferation Treaty despite U.S. policy supporting its universality.

Policies

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

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

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

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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant was born and educated through his bachelor’s degree in India. His parents and parents-in-law are citizens and residents of India. He has frequent³ contacts with his parents and parents-in-law living in India.

Applicant’s properties in India have a fair market value of \$2,500,000. Applicant has “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the [Applicant] to heightened risk of foreign influence or exploitation.” See *generally* ISCR Case No. 12-00120 (App. Bd. Feb. 10, 2014) (affirming denial of security clearance because of

³See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be “frequent” under AG ¶¶ 7 and 8).

applicant's connections to India and noting administrative judge's findings of heightened risk in relation to family relationships and property interests of \$340,000 in India). See *also* ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his wife) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

None of the disqualifying conditions apply to SOR ¶ 1.b (stating "[y]our one sister and one brother are citizens of India residing in the United States."). SOR ¶ 1.b is mitigated.

Applicant lives with his spouse in the United States. His spouse is close to her parents, who are residents and citizens of India. Applicant frequently communicates with his parents-in-law. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, and she is close to her parents. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Thus, an indirect, but important tie remains between Applicant and his in-laws living in India. Indirect influence from Applicant's in-laws living in India, through Applicant's spouse to Applicant, could result in a security concern. In addition, Applicant has ties of affection to his parents-in-law as shown by his frequent communications with them.

Applicant's relationships with residents of India create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his spouse and her parents, or his own parents, who are in India. For example, if terrorists or government officials in India wanted to expose Applicant to coercion, they could exert pressure on his in-laws or parents in India. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

Applicant's and his spouse's possessions of close family ties with their families living in India, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian

government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of India with the United States, places some, but not an insurmountable burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with family members living in India do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives in India.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from India seek or have sought classified or economic information from or through Applicant, his spouse, or his relatives living in India, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and India has a problem with terrorism. Applicant's and his spouse's relationships with family members living in India create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in India by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's and his spouse's contacts with family living in India. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

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

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contacts with his parents and parents-in-law, who are living in India. His loyalty and connections to family living in India is a positive character trait. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are India citizens living in India] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. In 1995, he immigrated to the United States, and in 2006, he and his spouse became naturalized U.S. citizens. On July 2, 2010, he renounced his Indian citizenship, and he surrendered his Indian passport. His spouse and two children are U.S. citizens, and live in the United States. When he took an oath and swore allegiance to the United States in 2006, as part of his naturalization as a U.S. citizen, and when he volunteered to assist the U.S. Government as a contractor, he

manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in India. There is no evidence, however, that terrorists, criminals, the Indian Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.⁴ As such, there is a reduced possibility that Applicant or his family living in India would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in India is from terrorists and other lawless elements and not the Indian Government.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in India. Applicant and his spouse's family in India could become potential targets of terrorists because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family from lawless elements in India.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in India. Applicant is not required to report his contacts with citizens or residents of India.

AG ¶ 8(f) does not fully apply to mitigate security concerns arising from Applicant's property located in India. Applicant has a substantial investment in India with property with a fair market value of \$2,500,000. Applicant's net worth in the United States of \$1,700,000, and his and his spouse's U.S. salaries are important components of his economic connections to the United States; however, his U.S. economic connections are not sufficient in magnitude to fully negate his India financial connections as a security concern.

In sum, Applicant and his spouse's connections to family living in India are significant. Applicant communicates with family in India frequently and is close to them. He travels to India about every other year. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. The primary impediment to Applicant's access to classified information is his interest in his properties in India, which amounts to about \$2,500,000. Should Applicant divest himself of these properties, this impediment to his access to classified information could be mitigated. Foreign influence security concerns under Guideline B are not mitigated at this time.

⁴There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes one condition with seven subparts that could raise a security concern and may be disqualifying in Applicant’s case. AG ¶ 10(a) provides:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

The scope of AG ¶ 10 is not limited to the specifically enumerated disqualifying conditions and includes obtaining a permanent Indian visa or identification card. AG ¶ 10(a) applies.

AG ¶ 11 provides six conditions that could mitigate security concerns in this case:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(b) applies. In 2006, Applicant obtained a permanent Indian visa. On July 2, 2010, Applicant renounced his citizenship and surrendered his Indian passport. The use of his permanent Indian visa is so limited that it does not independently raise a security concern. See Embassy of India, <https://www.indianembassy.org/pages.php?id=20>. Based on the entire record, foreign preference concerns are 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 the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The factors weighing towards approval of Applicant's security clearance are noteworthy; however, they are less substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. When he was naturalized as a U.S. citizen in 2006, he and his spouse became naturalized U.S. citizens, and they swore allegiance to the United States. On July 2, 2010, he renounced his Indian citizenship, and he surrendered his Indian passport. His spouse and two children are U.S. citizens and reside in the United States. He volunteered to serve as a contractor supporting the DOD. Applicant's net worth in the United States of \$1,700,000, and his and his spouse's U.S. salaries are important components of his economic connections to the United States. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant.

A Guideline B decision concerning India must take into consideration the geopolitical situation and dangers there.⁵ India is a dangerous place because of violence from terrorists and other lawless elements, but not as dangerous as many other countries. Terrorists continue to threaten the Indian Government, the interests of the United States, and those who cooperate and assist the United States. The Indian Government does not fully comply with the rule of law or protect civil liberties in some instances. The United States and Indian Governments are allies in the war on terrorism. India and the United States have close relationships in diplomacy and trade. India and the United States have sometimes had profound policy disputes.

There are foreign influence security concerns arising from Applicant's parents and his spouse's parents living in India, and his financial interest in property in India that warrant greater weight than his connections to the United States. Applicant and his spouse's parents are Indian citizens, who live in India. Applicant frequently communicates with them. He travels to India every other year or so. His financial interests in India are valued at about \$2,500,000. His close connections to family in India and substantial Indian property interests make Applicant more vulnerable as a target of coercion by lawless elements in India. His family and financial interests in India will be at a greater risk if his clearance is granted.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Although foreign preference concerns are mitigated, I conclude Applicant has not carried his burden and foreign influence concerns are not mitigated at this time. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

⁵ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge