



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-03953
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/14/2015

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on April 15, 2013. On November 26, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on December 10, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 4, 2015, and the case was assigned to me on May 7, 2015. On May 8, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 3, 2015. I convened the hearing as scheduled. Government Exhibits

(GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) 1 through 13, which were admitted without objection. DOHA received the transcript (Tr.) on June 12, 2015.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about India. (GX 2.) I granted the request, without objection from Applicant. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact<sup>1</sup>**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a and 1.b, and he denied SOR ¶ 1.c. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old information technology and management consultant employed by a federal contractor since March 2013. He was employed by another federal contractor from July 2012 to March 2013, and he worked for private-sector companies from May 1999 to July 2012. He has never held a security clearance.

Applicant was born in India. He earned an associate's degree from a college in India in 1991. He came to the United States in May 1999, earned a bachelor's degree from a U.S. university in April 2004, and is currently enrolled part time in graduate school, seeking a master's degree in business administration. (AX 5-6.) He became a U.S. citizen in September 2008. When he became a U.S. citizen, he notified the Indian consulate, and his Indian passport was cancelled.

Applicant's testimony at the hearing reflected his pride in his job. He testified, "[T]his country has given me so much, I need to give something back in the public service." (Tr. 23.) While working in the private sector, he received numerous accolades and awards for his exceptional performance. (AX 9-11.) In his current job, he has earned a reputation from supervisors and co-workers for reliability, technical skill, loyalty, honesty, leadership, and dedication. His friends describe him as kind, generous, a proud father, loving husband, and great friend. (AX 1.a-1.d.)

Applicant married a citizen of India in July 2000, and she became a U.S. citizen. They have two children who are native-born U.S. citizens. Both of his children are honor-roll students and active in school activities. (AX 12-13.)

Applicant purchased a home in the United States in January 2006, where he and his family lived until he began his current job. He now rents a home near his job site. He had difficulty selling his home because of the depressed housing market. He testified that he was advised by a neighbor to let the mortgage holder foreclose on the home, but

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<sup>1</sup> Applicant's biographical and family information is reflected in his security clearance application (GX 1) and corroborated by his testimony at the hearing.

he felt an obligation to honor his contract. After three years of maintaining his former home, he sold it at a loss. (Tr. 28-29.)

Applicant's mother, brother, sister, uncle, mother-in-law, and father-in-law are citizens and residents of India. His father passed away in 1993.

Applicant's mother receives a pension based on her deceased husband's private-sector employment. She has never worked outside the home. Applicant does not routinely send her money, but he occasionally sends money when his mother asks for it for special needs. He calls his mother once a week. (Tr. 39-41.)

Applicant's brother works for the film industry in India as an independent contractor. His brother's wife does not work outside the home. Applicant calls his brother about once a week. (Tr. 40-42.)

Applicant's sister is an administrative assistant for a business consulting company. Her husband operates a private-sector company involved in printing technology. (Tr. 42.) Applicant calls his sister every other week.

Applicant's uncle is about 70 years old. He worked for a battery manufacturer in India. His wife has never worked outside the home. Applicant contacts his uncle about once a month. (Tr. 43.)

Applicant's father-in-law is retired from the Indian railway system. His mother-in-law has never worked outside the home. His brother-in-law works for the Indian railway system. Applicant's sister-in-law does not work outside the home, and her husband is a supervisor for a local bus system. Applicant does not call his in-laws, but his wife calls her parents about once a month and her siblings on special occasions. (Tr. 43-46.)

In March 2011, Applicant and his wife bought an apartment in India as a vacation home and a place to stay while visiting family members. His 75-year-old mother lived in the home, which is near a medical facility. He sold the property, which was worth about \$200,000, after he applied for a security clearance and learned that his property raised security issues. (Tr. 31-32.) His mother now lives in a rented home. (Tr. 47-48.)

Applicant has a bank account in India, with a nominal balance. He uses it to facilitate sending money to his mother. (GX 1 at 34; Tr. 48-49.)

Applicant holds a "person of Indian origin" (PIO) card issued by the Indian government, which is a multiple-entry visa. He obtained the PIO to facilitate visiting his elderly mother. The PIO does not grant any privileges of Indian citizenship, except for unlimited travel to and from India. (Tr. 32-33; AX 3.)

India is a multiparty, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. Its political history since it gained independence from Great Britain in 1947 has included several armed conflicts

with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups in different parts of the country. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations.

The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. Nevertheless, the United States recognizes that India is important to U.S. strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law.

The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in fighting terrorism, creating a strategically stable Asia, and the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean.

In the past, 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 is one of many countries engaged in economic intelligence collection and industrial espionage directed at the United States. The United States has economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian Government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. Abuses by police and security forces have occurred primarily in criminal investigations and efforts to suppress separatist and terrorist groups. There is no evidence that India uses torture or abuse against its citizens to extract economic intelligence.

India does not recognize dual citizenship. Foreign citizens entering India are required to obtain a visa. Travelers entering on tourist visas are not allowed reentry within two months, unless they obtain specific permission. Non-citizens of Indian origin may obtain a "person of Indian origin" (PIO) card, which allows unlimited travel to and from India.

## **Policies**

"[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[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**

### **Guideline B, Foreign Influence**

The SOR alleges that Applicant’s mother, brother, sister, uncle, mother-in-law, and father-in-law are citizens and residents of India (SOR ¶¶ 1.a and 1.b). It also alleges that Applicant owns property in India worth about \$200,000 (SOR ¶ 1.c). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. 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 operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Four disqualifying conditions under this guideline are relevant to this case:

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): 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.

AG ¶ 7(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

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.

AG ¶¶ 7(a), (d), and (e) all require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions 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.

Where foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). "[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." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002); see *also* ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011).

Applicant's family ties in India, the multiple areas of potential disagreement between India and the United States, the incidents of illegal export of restricted, dual-use technology from the United States to India, and the continuing threat of terrorism throughout India are sufficient to establish the heightened risk in AG ¶¶ 7(a) and (d) and the potential conflict of interest in AG ¶ 7(b). AG ¶ 7(e) is not established, because Applicant no longer owns the apartment in India. The nominal value of his Indian bank account is insufficient to establish a "heightened risk" or potential conflict of interest.

The following mitigating conditions under this guideline are potentially relevant:

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;

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; and

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.

AG ¶ 8(a) is not established, for the reasons set out in the above discussion of AG ¶¶ 7(a), (b), and (d). AG ¶ 8(c) is not established for Applicant's contacts with his mother and siblings, because he has not rebutted the presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has virtually no contact with his in-laws in India, but his wife's contacts with them preclude Application of AG ¶ 8(c) because of the potential for indirect foreign influence exercised through his wife.

AGA ¶ 8(b) is established. Applicant has lived in the United States since 1999 and has been a U.S. citizen since 2008. His wife and children are U.S. citizens. His professional career is centered in the United States. His friends and associates are citizens and residents of the United States. He is intensely proud of his public service, and he is grateful to the United States for the opportunities it has given him. He has a strong sense of personal responsibility, as demonstrated by the financial hardship he willingly endured to satisfy his financial responsibility for his former family home.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid, sincere, and credible at the hearing. He is deeply grateful to the United States for the opportunities he and his family have enjoyed. He has a long track record of honesty, dedication, reliability, and trustworthiness.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his foreign family ties. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
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Subparagraphs 1.a-1.c:	For Applicant
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### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge