



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



In the matter of:

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) ISCR Case No. 14-04993  
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Applicant for Security Clearance

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

April 23, 2015

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 18, 2013. On November 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 20, 2014. He answered the SOR in writing (Answer) that same date, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on February 18, 2015. DOHA issued a notice of hearing on February 19, 2015, and I convened the hearing as scheduled on March 11, 2015. The Government offered Exhibit (GX) 1, which was received without objection. Applicant testified on his own behalf and

submitted Exhibits (AppXs) A through D, which were received without objection. DOHA received the transcript of the hearing (TR) on March 19, 2015. I granted Applicant's request to keep the record open until April 11, 2015, to submit additional matters. On April 1, 2015, he submitted Exhibit E, which was received without objection. The record closed on Monday, April 13, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. The request was granted. 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**

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

### **Guideline B - Foreign Influence**

The 46 year-old Applicant was born in India, came to the United States at the age of 28, and became a U.S. citizen in 2008. (TR at page 22 line 9 to page 23 line 2, and GX 1 at page 7.) He received "both a Bachelor's and Master's [Degree] in India," and is employed as a "Software Engineer." (TR at page 24 line 17 to page 25 line 3.) This is the first time he has applied for a security clearance. (TR at page 25 line 24 to page 26 line 1.)

1.a., 1.b., 1.g. and 1.i. Applicant's mother and father are citizens and residents of India. (TR at page 32 lines 21~25.) His 70 year-old mother never worked, but his 74 year-old father worked for a state government. (TR at page 33 line 1 to page 34 line 2, and Answer at page 1.) Applicant's father is now retired, and gets a Social Security type pension from the Indian government. (*Id.*) Applicant maintains a bank account in India, in part, to help provide for his parents' needs. (TR at page 34 lines 3~19, and at page 40 line 16 to page 41 line 6.)

1.c. Applicant's 43 year-old brother is a citizen and resident of India. (TR at page 35 lines 8~14, at page 36 lines 9~25, and Answer at page 1.) He is "a stock broker," and lives at home with Applicant's parents. (*Id.*)

1.d. Applicant's two sisters are citizens and residents of India. (TR at page 37 line 1 to page 38 line 5.) They are both "housewives," but one's husband works for the national railroad, and the other's husband "is a high school teacher." (*Id.*, and TR at page 49 line 20 to page 50 line 5.)

1.e. and 1.i. Applicant's two sisters-in-laws are citizens and residents of India. (TR at page 38 line 17 to page 40 line 15.) One is a high school teacher, and the other is a housewife. (*Id.*) Applicant provides some financial support for his sister-in-law housewife. (TR at page 40 line 16 to page 41 line 6.)

1.f. Applicant's brother-in-law is a citizen and resident of India. (TR at page 41 line 7 to page 42 line 3.) He is a primary school teacher, working for "an NGO," a Non-Government Organization. (*Id.*)

1.g. and 1.h. Applicant has two bank accounts in India, worth now only about "\$8,000." (TR at page 45 line 17 to page 46 line 2.) He uses one account to help his parents and sister-in-law, noted above; and the other account to support a condo, that is under construction, worth about \$60,000, which he owns in India. (TR at page 48 line 24 to page 49 line 19, and at page 42 line 15 to page 45 line 16.) The value of the under-construction condo pales in comparison to his \$600,000 net worth in the United States. (TR at page 29 line 20 to page 30 line 5, and at page 30 line 17 to page 31 line 19.)

I also take administrative notice of the following facts. In 2008, India was reported as involved in criminal espionage and U.S. export controls enforcement cases. In a 2009~2011 Report, Congress noted India as targeting sensitive U.S. economic information and technology. Furthermore, 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. However, the United States is one of India's largest trade and investment partners. (AppX D.) Our partnership is one of the defining partnerships of the 21<sup>st</sup> century. (*Id.*)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 avoided drawing 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B - Foreign Influence**

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

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 a foreign interest.

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s parents, siblings, and in-laws are citizens of India. Through an Indian bank

account, he also provides financial support to his parents and to a sister-in-law. Paragraph 7(e) is also applicable: “a substantial . . . property interest in a foreign country . . . .” He owns a \$60,000 condo that is under construction in India. However, this latter concern is clearly mitigated by Paragraph 8(f) as “the value [of the] property interest is such that . . . [it is] unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.” His net worth in the United States is about \$600,000 or ten times that of his net worth in India. In light of Applicant’s close and continuing family connections in India, however, I find Foreign Influence against the Applicant.

### **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. 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.

The Administrative Judge should also 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 considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Although Applicant is well respected in the work place (AppX E at pages 1~2), overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concern arising from his Foreign Influence.

### **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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

### **Conclusion**

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

Richard A. Cefola  
Administrative Judge