



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-05043
	)	
Applicant for a Public Trust Position	)	

**Appearances**

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

06/28/2016

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility to occupy a public trust position to work in the defense industry. Applicant is a naturalized U.S. citizen from India. In addition to maintaining close ties to family members who are citizens and residents of India, Applicant continues to accumulate significant ties to India through the accumulation of over \$200,000 in India-based assets. Eligibility to occupy a position of trust is denied.

**Statement of the Case**

On December 1, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the foreign influence and foreign preference guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s eligibility to occupy a public trust position.

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<sup>1</sup> This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG)*, effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> Department Counsel submitted its written case on April 8, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 21, 2015. She did not respond. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 and 2, without objection.

## **Procedural Matters**

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about India. Without objection from Applicant, I approved the request, which is appended to the record as Hearing Exhibit (HE) I. The relevant facts are highlighted in the Findings of Fact section, below.

### **Findings of Fact**

Applicant, 41, has worked for a federal contractor since October 2009. After completing an eligibility application in 2011 and 2012, she was granted eligibility to occupy a public trust position by another government agency (AGA). She now seeks to obtain eligibility to occupy a position of trust from the DOD. She completed her most recent eligibility application in February 2014, reporting new information that was not considered during her earlier eligibility investigations.<sup>3</sup>

Applicant is originally from India, a parliamentary democracy that shares significant strategic interests with the United States. In addition to cooperating on counter-terrorism issues, the two countries have increased trade in goods and services, cooperate on nuclear policy, and engage in mutual efforts to address pollution and climate change. Although largely positive, the relationship between the United States and India is not without its concerns. India is an avid collector of U.S. proprietary information, and there have been several criminal cases of industrial espionage arising out of India, both from private sources and from the government itself. Terrorist activity occurs in India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups. India has some significant problems with human rights. India has good diplomatic relations with Iran and supports that country's efforts to develop nuclear energy for peaceful purposes. India's largest supplier of military systems and spare parts is Russia.<sup>4</sup>

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<sup>2</sup> GE 1.

<sup>3</sup> GE 2.

<sup>4</sup> HE I; GE 2.

Applicant immigrated to the United States in November 1999. She became a naturalized U.S. citizen in December 2011. Married since December 2001, Applicant's husband is a permanent resident of the United States. Her child, 11, is a U.S. citizen by birth. Applicant's mother-in-law is also a U.S. permanent resident and lives with Applicant and her family. Applicant and her husband have been homeowners since 2004. Applicant's parents and her sister are citizens and residents of India. Applicant's father is a retired banker. The name of the bank suggests that it is a government agency similar to the U.S. Federal Reserve Bank, but the record does not provide any information to confirm this fact. Applicant's sister works at a hotel. Applicant maintains weekly telephonic contact with her family members and provides \$500 monthly in financial support to her parents. In the last seven years, Applicant has traveled to India three times to visit her family. On her 2007 and 2009 trips, she entered the country using her Indian passport. The Indian government issued Applicant a passport in 2007 with a 2017 expiration date. In March 2012, Applicant filed documents with the Indian government renouncing her Indian citizenship and surrendering her Indian passport.<sup>5</sup>

Applicant and her husband have purchased two properties in India. In December 2009, Applicant purchased an apartment currently valued at \$104,000. In February 2014, the same month she completed her eligibility application, Applicant and her husband purchased a second flat worth \$107,000. The couple opened a savings account in India in 2005 that currently has a balance of \$15,000. The assets are controlled by Applicant's father. In her answer to the SOR, Applicant claims that her husband is the primary owner of the Indian properties. She also offered to close the bank account, if necessary.<sup>6</sup>

## Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."<sup>7</sup> "The standard that must be met for . . . assignment to sensitive duties, is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."<sup>8</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>9</sup> An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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<sup>5</sup> GE 1-2.

<sup>6</sup> GE 1-2.

<sup>7</sup> DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>8</sup> Regulation ¶ C6.1.1.1.

<sup>9</sup> See Regulation ¶ C8.2.1.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to a public trust position 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Foreign Preference**

Security concerns involving foreign preference arise when an individual acts in such a way as to indicate a preference for a foreign country over the United States.<sup>10</sup> The SOR alleges that Applicant held an Indian passport issued in 2007 with a 2017 expiration date. Based on Applicant’s disclosures in her eligibility application, the Government had a good-faith basis for making this allegation.<sup>11</sup> However, in her answer to the SOR, Applicant provided documentation that she renounced her Indian citizenship and surrendered her Indian passport two years before completing her most recent eligibility application. The foreign preference concern is mitigated.<sup>12</sup>

### **Foreign Influence**

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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.”<sup>13</sup> The SOR alleges that Applicant’s husband is a citizen of India, residing in the United States as a permanent resident. The SOR also alleges that Applicant’s parents and sister are also residents and citizens of India and that her father is a retired employee of an Indian bank. Although the relationship between the United States and India is largely favorable, India has a documented history of collecting U.S proprietary information. Also, Indian citizens have been involved in several criminal cases of industrial espionage against the United

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<sup>10</sup> AG ¶ 9.

<sup>11</sup> AG ¶ 10(a).

<sup>12</sup> AG ¶ 11(e).

<sup>13</sup> AG ¶ 6.

States. Accordingly, the record contains sufficient information to support a finding that Applicant's relationships create a heightened risk of coercion and exploitation.<sup>14</sup>

Concerns raised by Applicant's father's status as a retired banker is mitigated. He has been retired for over a decade and the record contains no information to suggest that he has ongoing ties to the Indian government. However, the concerns regarding the citizenship and residency status of Applicant's husband, parents, and sister remain. Applicant maintains strong ties to her Indian relatives as shown through her ongoing financial support of her family and her regular contact with them. Also, Applicant and her husband continue to strengthen their ties to India and obligations to the Indian government through the accumulation of India-based assets that are valued at over \$200,000. This asset accumulation has occurred after Applicant's husband obtained permanent resident status and Applicant became a naturalized U.S. citizen. On balance, Applicant's ties to the U.S. do not appear to outweigh those to India. Applicant has failed to establish that she has such deep and longstanding relationship and loyalties to the U.S. that she can be expected to resolve any conflict of interests in favor of the U.S. interests.

Based on the record, I have doubts about Applicant's ability to protect and handle sensitive information. In reaching this conclusion, I have considered the whole-person factors in AG ¶ 2. Applicant's connections to India raise concerns about her ability to handle and safeguard sensitive information. She has not provided sufficient information to mitigate the foreign influence concerns.

### **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, Foreign Preference	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Foreign Influence:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b, 2.d - 2.e:	Against Applicant
Subparagraph 2.c:	For Applicant

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<sup>14</sup> AG ¶ 7(a).

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy a position of trust. Applicant's access to sensitive information is denied.

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Nichole L. Noel  
Administrative Judge