

DATE: October 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24428

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

John P. Janacek, Esq.

SYNOPSIS

Applicant, a native of India, acquired United States citizenship in February 2001. He holds all the key management positions with a U.S. computer company whose U.S. parent sends half of its commercial business to a subsidiary firm in India. In addition to serving as president, director, and part-owner of the U.S. parent, Applicant is a director of the subsidiary in India as well as of an independent Indian firm that he co-founded in 1986. He has financial assets in India (bank accounts, real property, a 14.63% share in the independent Indian company). His mother, siblings, and most of his in-laws are resident citizens of India. There are no foreign preference concerns where he has renounced his Indian citizenship. Potential outside activities concerns presented by his involvement with the businesses firms in India are mitigated where steps have been taken to insulate the U.S. subsidiary. Yet an unacceptable risk of undue foreign influence persists because of the ties to the companies domiciled in India, his substantial foreign assets in India, and his ties of affection and/or obligation to family members in India. Clearance is denied.

STATEMENT OF THE CASE

On October 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked. The SOR was based on outside activities (Guideline L), foreign preference (Guideline C), and foreign influence (Guideline B).

Applicant answered the SOR on December 18, 2004, and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 27, 2005. Pursuant to Notice of Hearing issued June 13, 2005, I convened a hearing on June 27, 2005. The government's case consisted of nine exhibits and the testimony of a Defense Security Service (DSS) industrial security representative. At the government's request, I agreed to take administrative notice of three publications: the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* for 2000; the U.S. State Department's *Background Note: India* dated November 2004; and an

article titled *Espionage by the Numbers: A Statistical Overview*. Applicant's case consisted of 27 exhibits and testimonies from himself, a neighbor, and a certified public accountant. A transcript of the proceeding was received on July 22, 2005.

FINDINGS OF FACT

The SOR alleges involvement in outside activities that could pose a conflict with Applicant's security responsibilities. Specifically, he owns an interest in, and serves as a director of, a computer company incorporated in India and providing computer support in India, and he also serves as president, chairman of the board, and treasurer of a company providing computer support services to U.S. government agencies. (2) Foreign preference allegations concern the exercise of dual citizenship (India and the U.S.), and possession of an Indian passport as of September 4, 2003. Foreign influence concerns are alleged because of the Indian residency and citizenship of his mother, four sisters, parents-in-law, brother-in-law, and sister-in-law; his possession of foreign assets (ownership of two condominiums and land in India, and cash on deposit in accounts in India); his service as a director of a company in India; his travels to India; his ownership share and/or status as officer of the corporations alleged in SOR ¶¶ 1.a. and 1.b.

Concerning the alleged outside activities, Applicant admitted only that the Indian company in SOR ¶ 1.a. sells computer equipment and hardware and related support services, and that the U.S. company in SOR ¶ 1.b. provides development services to the U.S. government. He denied the employment activities posed a conflict with his security responsibilities. As for the foreign preference concerns, Applicant denied dual citizenship, as his Indian citizenship was automatically revoked on his U.S. naturalization in 2001. Applicant admitted his relatives are Indian resident citizens, but neither agents of a foreign power nor in positions to be exploited. He also admitted he has foreign assets, which he described as minimal. Applicant's admissions are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings:

Applicant was born in August 1960 in a state in the southern region of the Republic of India. The oldest of five children, he was raised with his four younger sisters in India. His mother never worked outside of the home, while his father was an educator who founded a junior college in India in about 1992. After earning his undergraduate degree in electrical engineering from a technological university in India, Applicant worked in sales and development for two of India's largest corporations.

In 1986, Applicant founded with two others a closely held information technology application outsourcing company (India company A) in India that is engaged in the sale of computer equipment and hardware and related support services to businesses in India. An old college friend, Mr. X, joined the company in 1988 after one of other founders retired. In August 1991, Applicant came to the U.S. on a business visa in a search for business opportunities for company A. Applicant was offered, and he accepted in May 1992, a management position with a software consulting company in the U.S. (U.S. company B) that hired most of its employees from India and placed these employees onsite with "end user" client companies in the U.S. No longer involved in the day-to-day operations of company A, Applicant remained on the board of directors of the Indian company he co-founded. With the assistance of his new employer, Applicant secured a foreign worker visa and relocated to his present locale, and he started working for U.S. company B that summer.

In October 1992, Applicant married a citizen of India whom he had known since 1985 when they worked for the same company in India. She has three daughters, who were born in India in 1973, 1976, and 1980. Beginning in 1989, Applicant's spouse traveled off and on to the U.S. on a business visa, initially to provide technical consulting expertise to U.S. customers of an Indian company. In Fall 1992, she began working as a software consultant for U.S. company B in the U.S., obtaining an H-1 visa through the company.

Circa late 1992 or early 1993, U.S. company B sponsored an application for U.S. permanent residence status for Applicant's spouse. Applicant and her three children (one daughter in the U.S. since summer 1991 and the other two in boarding school in India) were listed as her dependents. In mid-January 1994, Applicant signed an employment contract that included a two-year term and a covenant not to compete, with a stipulation that the contract was subject to review and modification. Threatened with employment termination and withdrawal of her green card application if she refused to sign her employment agreement, Applicant's spouse executed her employment contract the next day. Applicant's employment agreement was subsequently modified, with the two-year term eliminated, and including clauses that

Applicant's employment could be terminated without cause with 60-days written notice and a non compete provision for one year from Applicant's termination.

In spring 1994, Applicant became a vice president of company B where he was responsible for technical screening and recruitment of software professionals, human resource management, marketing company services, and development and management of client accounts. Applicant, who had questioned the company's business practices involving payroll, taxes, allowances, and immigration matters, began to express his concerns in writing, as he feared personal liability. In late July 1994, the president of the company terminated Applicant's employment, no reason being given. In Fall 1994, Applicant began part-time studies for an M.B.A. degree, and he started a computer consultant business (U.S. company C) out of his home in the U.S., which was incorporated in March 1995 with him as president. He subsequently made an Indian national (Mr. Y) a partner in the business. After Applicant placed employees with two companies that had been clients of U.S. company B, his former employer filed a civil suit against Applicant, alleging in part breach of the non compete covenant. Applicant counterclaimed, alleging in part wrongful termination. The parties eventually reached an out of court settlement in early 1999. ⁽³⁾

In 1996, Applicant's two stepdaughters, who had been in boarding school in India, moved to the U.S. with permanent resident alien status. In April 1996, Applicant's Indian passport was renewed for ten years by the Indian consulate. Applicant traveled on his Indian passport to India to see his family members in late October 1997, November 1998, May 1999 on the death of his father, November 1999, and May 2000.

In 1998, Applicant started a software development company (India company D) in the capital city of his native region in India. A member of the board of directors, Applicant hired as managing director Mr. X, a former partner of his at India company A.

In 2000, Applicant applied for U.S. citizenship. In February 2001, Applicant, his spouse, and the stepdaughter who had been in the U.S. since 1991, became U.S. naturalized citizens. Their Indian citizenship was automatically revoked because of their voluntary acquisition of U.S. citizenship. ⁽⁴⁾ In March 2001, Applicant obtained his U.S. passport that he has since used exclusively for foreign travel, including on trips to India to see his mother and sisters in May 2001, June 2002, December 2002, July 2003, and September 2004. In April 2001, he was granted a business visa on his U.S. passport, allowing stays in India not to exceed 180 days, valid to April 2011. Applicant retained his Indian passport but did not use it because he understood it was no longer valid. During his visits to India, Applicant met with the managing partner of the India subsidiary and discussed company business.

Applicant's U.S. corporate interests underwent several name changes and reorganizations. Company C (hereafter parent company), which had been incorporated in 1995, acquired an affiliated entity in early January 2001, and became parent company to three subsidiaries, including India company D (hereafter India subsidiary) and the surviving entity (hereafter U.S. subsidiary) of an August 2002 merger between an unrelated company and an wholly owned subsidiary acquisitions company of the parent. ⁽⁵⁾ Applicant became president, board chairman, and secretary of this newly-formed company, which provides customized information technology products, solutions and services for the government and defense sectors. The first government contract was for a threat detection type system for homeland security. The U.S. subsidiary has since designed systems for the U.S. military.

As of early 2003, 65% percent of the parent company was owned by a U.S. investment corporation (hereafter "grandparent company"), organized in November 1999 with 97% of its company stock held in a Bermuda Trust. Applicant held no stock in the grandparent company, although he and Mr. Y, his partner in company C, continued to hold ownership shares in the parent company. The following tables sets forth the officers, directors, and owners of the companies involved in this case.

Company	Key Management	Ownership
Parent	Applicant-president, treasurer, director; Mr. Y (Indian citizen)-CEO, secretary, director;	Applicant 13.62%; Mr. Y 16.83% to Mar 03, share now in irrevocable trust for his minor children;

	Mr. Z (US citizen native of India)-board chairman.	Grandparent company 65%; Other U.S. citizens 3.03%; Other (10) foreign citizens 1.52%.
Grandparent (US company)	Mr. Z-president, vice president, secretary, sole director; Mr. AA (US native citizen)-treasurer; Mr. BB (US native citizen)-founder.	Stock in Bermuda trust transferred in Jul 03 to Mr. Z and Mr.BB each with 47.945%; Dutch company 2.37%; Other U.S. citizens 1.37%.
US subsidiary (seeking facility clearance)	Applicant-president, board chairman, treasurer, secretary and FSO (as of Apr 04); Mr. CC (US native citizen)-secretary, director (on resignation of Mr. Y in Mar 03), facility security officer until Apr 04; Mr. Z-director.	Parent company 100%
India subsidiary	Applicant-director	Parent company 100%
India company A	Applicant-director	As of Sep 03, Applicant's share 35%, declined to 14.63% as of Jun 05 (\$5,592 USD)

In an effort to obtain a secret-level clearance for the U.S. subsidiary, Applicant, as president of the company, executed a certificate pertaining to foreign interests (SF 328) on May 30, 2003. In detailing reportable foreign interests, he revealed that its parent corporation had a subsidiary company in India that conducts "a limited amount of research and development" for the parent, but has no common projects and operates independently from the U.S. subsidiary. Applicant also disclosed that Mr. Y, an Indian citizen, served in key management and board positions of the parent company, but not of the U.S. subsidiary and would be excluded from any relationship with classified programs or data provided to the U.S. subsidiary. In response to whether any of the board members, officers or senior management officials hold any positions with any foreign persons, Applicant revealed that he serves on the boards of the India subsidiary and independent India company A. Also on May 30, 2003, the parent corporation issued a resolution, excluding its officers and directors from access to classified information provided to its U.S. subsidiary, and delegating full authority to the U.S. subsidiary to act independent of the parent in all matters that involve, or relate to, the firm's responsibility to safeguard classified information. The grandparent company also took steps to exclude itself and its key management personnel (Messrs. Z, AA, BB) from clearance. Concerning the U.S. subsidiary, the company filed for exclusion of director Mr. Z, but requested secret clearance for Applicant and Mr. CC. Because of their respective positions as president/chairman of the board and facility security officer, they were required to be cleared for the company to hold a facility clearance within the defense industrial security program.⁽⁶⁾ Circa April 2004, Mr. CC resigned from the company, so Applicant assumed the additional management positions of secretary and facility security officer.

The U.S. parent company employs only 12 to 15 persons, who are primarily in analysis/design work and project management. Its India subsidiary serves as the development arm for its commercial business, and the subsidiary performs about half of the parent company's business. The India subsidiary employs about 100 Indian nationals in software programming/development work. As of February 2004, the India subsidiary had earmarked \$2 million USD for its expansion and had plans to double its workforce. A Level V certified facility as measured by the software engineering institute of a major U.S. university, the company had demonstrated that it has well-defined, measured processes for software development from analysis to deployment and maintenance. Applicant is not compensated for being a corporate officer of the U.S. parent company or a director of the India subsidiary. He is not involved in the day-to-day operations of the India subsidiary, but signs the company's tax return and reviews the financial statements.

Applicant is willing to resign from the board if necessary to acquire his security clearance. He has a personal relationship with the president/director of the India subsidiary, Mr. X, whom he has known since college.

The U.S. subsidiary seeking the facility clearance has a workforce of about 60 employees who are mostly U.S. citizens. Due to security concerns, the U.S. subsidiary does not subcontract any of its work to the India subsidiary. Applicant earns an annual base salary of \$165,000 from the U.S. subsidiary.

Applicant remains a director of India company A that he founded in 1986. That foreign company has multiple office locations in India. Applicant considers his position to be honorary. He has visited the company in India about two or three times in the past 10 years. He last attended a board meeting about five years ago. Applicant holds about 14.63% equity share of the company's capital. His share was worth about \$5,592 USD as of June 2005. He allowed his previous share of 35% to be diluted so that ownership could be extended to a few loyal employees of the company. India company A has no business relationship with the U.S. subsidiary seeking a clearance or with its parent. Applicant is willing to resign from the board and divest himself of this foreign interest if retaining it would prevent him from obtaining a security clearance.

Applicant has property assets in India as well. In July 2002, Applicant and his spouse purchased a three-bedroom condominium in the capital city of his native state in India for \$25,000 USD so that they would have a place to stay during their visits and as a residence for his mother who he hoped would move there to be near two of his sisters. His mother did not like the location, so since January 2003, Applicant has allowed the India subsidiary to use it as a company guesthouse. Applicant does not charge a rental fee as the company pays the condominium fees and utilities. As of June 1995, the value of the property was about \$24,879 USD.

While on vacation in the same Indian city in July 2003, Applicant and his spouse purchased for about \$12,000 USD a three-bedroom condominium in a suburb. On its completion, his mother moved in and has since resided there. As of June 2005, the property was valued at \$12,253 USD. Applicant's mother lives off the pension/retirement of her late husband and the interest from Applicant's account with the post office. Applicant has telephone contact with her once weekly or once every two weeks. He visits her when he travels to India. She has never visited him in the U.S.

Applicant also owns two undeveloped plots in India, with a total value of \$8,577. The junior college founded by his father in 1992 uses the land and pays the taxes on the property. As of June 2005, Applicant had about \$1,454 USD total on deposit in two banks in India. One account, held jointly with his spouse since about 1993, had been used to purchase property in India and to pay his parents medical bills. He accesses that account a few times a year when he visits India. He had opened the other account so that his mother could obtain a safety deposit box. Applicant is willing to close these two accounts if necessary to obtain a clearance. In 1999, he and his spouse opened an interest bearing account with the postal service, depositing \$8,000 in the account. The interest earned, about \$90 monthly, is sent directly to his mother. As of June 2005, the balance on the account was about \$9,379 USD. Applicant would prefer to maintain that account as it provides supplemental income for his mother.

As of June 2005, Applicant's four sisters were resident citizens of India. Applicant telephones them about four times a year and sees them annually when he travels to India. Of the three sisters who live in the same city as his mother, two do not work outside of the home while the other is employed as a senior assistant by the state bank, which is chartered by the Indian government. The youngest of Applicant's four siblings is a teacher in an upper primary school. None of Applicant's sisters receive any financial support from him.

Applicant's mother-in-law, one of his two brothers-in-law, and his sister-in-law are resident citizens of India as well. Applicant's father-in-law, who had been a professor and translator of the Hindi language before his retirement, died in December 2003. Applicant's mother-in-law, a homemaker, lives off his pension. Applicant does not have any telephone contact with her. He visited her in India in July 2003, and in May 2004, she stayed with Applicant and his spouse for a time in the U.S. while grieving the loss of her husband. Her visit was at their invitation and they paid for her travel. One of Applicant's brothers-in-law has been working as an accountant in the U.S. since 2000. The other is a geophysicist employed by an oil company in India that is partly owned by the Indian government. Applicant sees this brother in law infrequently (once every two or three years), the last time in December 2002. This brother-in-law was visiting his parents who resided in the same city as Applicant's family. Applicant's sister-in-law lives next to her mother in India.

Applicant sees his sister-in-law about once a year when he is in India.

With the U.S. naturalization of his oldest stepdaughter in April 2003, two of his three stepdaughters are U.S. citizens. As of June 2005, all three were living in the U.S., the youngest (born in 1980) with Applicant and his spouse. The middle stepdaughter met her husband, an Indian citizen, when he was in the U.S. on a student and then work visa. He acquired employment with a private firm in India, and they moved to India in May 2003. Sometime in Spring 2005, Applicant's stepdaughter returned to the U.S.

Applicant disclosed his birth in India, the Indian residency and citizenship of family members, his possession of an Indian passport, his financial interests in India, his foreign travel, and his employment with India company A, on his application for a personnel security clearance (SF 86) executed July 15, 2003, and during an interview with a Defense Security Service special agent on September 4, 2003. Applicant acknowledged he retained possession of his Indian passport, but expressed his belief it was no longer valid since he became a U.S. citizen.

In May 2005, Applicant sent his Indian passport to the Indian Consulate. Noting that Applicant had renounced his Indian citizenship and acquired "US nationality," the Indian Consulate cancelled the passport and returned it to him for his records in June 2005.

As of June 2005, Applicant and his spouse had joint cash assets of \$86,647 USD on deposit in U.S. financial institutions. Their stock investment in the U.S. parent company, valued at \$2,894,400 amounted to 58.06% of their total financial assets. Mutual funds, stocks in publicly traded companies, and retirement accounts in the U.S. totaled about \$861,712 USD. They also own their home in the U.S., which had a market value of \$950,000 USD.

U.S. military personnel commands that have benefitted from the support of the U.S. subsidiary recommend grant of clearance to Applicant. Applicant has shown himself to be cooperative and responsive to the requirements of the military programs and to possess personal integrity and excellent judgment. Mr. CC, who served as a director of the U.S. subsidiary until April 2004, worked directly with Applicant in developing the business systems required to establish a defense contracting enterprise. He attests to Applicant's discipline and adherence to regulatory requirements and to his ability to handle sensitive matters with the appropriate discretion. The accountant who advised Applicant through the growth of his company and subsequent restructuring, and audited the corporate records of the parent company as well as the contracts of the U.S. subsidiary, always found Applicant to be honest, reliable, and meticulous in his dealings.

As of 2000, India was an active collector of U.S. economic intelligence. Since November 2001, the U.S. and India have been committed to a strategic partnership that has seen expanded cooperation in the areas of civilian nuclear activities, civilian space programs, and technology trade. The U.S. was India's largest trading partner and investment partner in 2003, with computer hardware being one of the principal exports to India. Major U.S. imports from India included internet-enabled services. The rapidly expanding software sector in India was modernizing India's economy. ⁽⁷⁾ India is the world's largest democracy.

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 occupy a position . . . that will give that person 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). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the

administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After a complete review of the evidence of record, the following adjudicative guidelines are pertinent to this case:

Outside Activities. Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information. (¶ E2.A12.1.1.)

Foreign Preference. 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. (¶ E2.A3.1.1.)

Foreign Influence. A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure. (¶ E2.A2.1.1.)

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guideline L, outside activities, Guideline C, foreign preference, and Guideline B, foreign influence:

An entrepreneur, Applicant came to the U.S. initially in August 1991 in search of business opportunities for an information technology application company (India company A) he had co-founded in his native India in 1986. In 1992, he and his spouse elected to remain in the U.S. and both accepted employment and green card sponsorship opportunities extended to them by a local software consulting firm that hired mostly Indian nationals. Although Applicant was no longer involved in the day-to-day operations of India company A, he remained an uncompensated member of the board and part owner. As of June 2005, his share of the Indian company was 14.63%. Under Guideline L of the Directive, outside employment activities, which include "any service, whether compensated, volunteer, or employment" (¶ E2.A12.1.2.), are of concern if they pose conflicts with an individual's security responsibilities and could create an increased risk of unauthorized risk of unauthorized disclosure of classified information.

What is known of India company A is that it is closely held, operates a principal development facility in the city where Applicant's mother and three of his four siblings reside, and has provided commercial information technology services for at least 39 businesses in India in the transport, agriculture, finance, medical, jewelry and arts, utilities, manufacturing industries. While the evidentiary record does not sustain a finding that any foreign country directs, owns, or is a customer of India company A, Guideline L disqualifying conditions (DC) E2.A12.1.2.2., service with any foreign national, and E2.A12.1.2.3. service with a representative of any foreign interest, apply.

The government also alleged outside activities concerns arising from Applicant's positions as president, board chairman, and treasurer with the U.S. subsidiary⁽⁸⁾ seeking a DoD facility clearance (SOR ¶ 1.b.). The U.S. subsidiary provides Applicant's primary employment and compensation, so it is not an "outside" activity. To the extent that his responsibilities as an executive officer may include oversight of projects that do not involve classified work for the government, the U.S. government does not exclude defense contracting firms from performing commercial or even military affiliated work for other clients, including those with foreign interests. For a facility to be cleared, the chairman of the board, the chief executive officer, the president, and facility security officer, must be cleared. Other directors as well as the secretary and treasurer can be excluded unless they have an independent need for access. (*See* Tr. 34) In this case, Applicant must receive his security clearance in order for the U.S. subsidiary to be a cleared facility within the

DoD industrial security program.

Applicant has a fiduciary obligation to the excluded parent as president and director of that corporate entity as well as to the U.S. subsidiary where he holds all the key management positions. This parent company also has a wholly-owned subsidiary in India employing about 100 Indian nationals in software development. Founded by Applicant, this India subsidiary, of which Applicant is a director, is headed by a college classmate of Applicant's with whom he has a personal as well as a professional relationship. The U.S. parent company employs only 12 to 15 persons, who are primarily in analysis/design work and project management. Its India subsidiary serves as the development arm for its commercial business, and the subsidiary performs about half of the parent company's commercial business. While Applicant is not involved in the India subsidiary's daily operations, he reviews the company's records and signs its tax returns. When in India to see his family members once a year, he discusses company business with the president/CEO of the India subsidiary.

There is a potential conflict presented by his service as director and part owner of the independent India company A. Furthermore, while the beneficiary of Applicant's services for the India subsidiary is the U.S. parent and grandparent, and not a foreign country, a foreign national, or a representative of a foreign interest, Applicant could conceivably shift work to Indian programmers employed by the India subsidiary. The concerns presented by service or employment involving a foreign entity or person may be mitigated where evaluation of the outside employment or activity indicates that it does not pose a conflict with security responsibilities (E2.A12.1.3.1.), or the individual terminates the employment or activities on being notified that they conflict with his or her security responsibilities (E2.A12.1.3.2.). Applicant has expressed a willingness to resign his position as director of India company A, and to divest himself of his financial interest in the company if necessary to obtain a security clearance. Similarly, he offered to resign as a member of the board of the parent company's India subsidiary. (Tr. 78-80) An offer to take action in the future does not constitute evidence of changed circumstances. With the issuance of the SOR, Applicant was put on notice that his service on the board of India company A was of concern to the Department of Defense. As of June 2005, he was still on the boards of the respective business entities domiciled in India.

However, Applicant also testified credibly, unrebutted by the government, that India company A operates independently from, and has no business relationships with, the U.S. subsidiary, the U.S. parent company, and the Indian subsidiary, and its work is commercial in nature. He has no involvement with the day-to-day operations of the corporation and has not attended a board meeting in the past five years. This arms-length business relationship with the India firm does not appear to pose a conflict with his security responsibilities, notwithstanding he owns 14.63% of the company. As far as the India subsidiary is concerned, adequate assurances that Applicant will not shift the U.S. subsidiary's work to the India subsidiary are found in the already established U.S. subsidiary policies to hire only U.S. citizens (or with limited exception U.S. permanent residents) and to not subcontract work outside the U.S., and in Applicant's reputation for ethical behavior among those who have had the opportunity to work with him or review the books of the U.S. companies. Applicant has been above board about his corporate responsibilities with the Department of Defense.

This case involves more than arms-length corporate relationships and the globalization of business with increasing outsourcing/off-shoring, however. Applicant's fiduciary responsibilities as officer and/or director to businesses in India take on added security significance because of his extensive familial and financial interests in India. Applicant's mother, four sisters, mother-in-law, one of his two brothers-in-law, and sister-in-law, are resident citizens of India. Foreign influence, Guideline B, concerns are raised where an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Contacts with citizens of other countries or financial interests are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. (Directive ¶ E2.A2.1.1.)

Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service. The evidence reflects Applicant has strong feelings of affection and/or obligation to his mother in India. While she lives off a pension provided by her late husband, she also depends on Applicant for her current living arrangements and the interest in the post office account he has for her benefit. He telephones her once weekly or every other week, and visits her in India annually. While his contacts with his siblings

are less frequent (about four times a year), Applicant visits them in India. Moreover, although Applicant does not telephone his mother-in-law in India, she stayed with Applicant and his spouse in the U.S. at their invitation in May 2004. One of Applicant's stepdaughters is a citizen of India, albeit living in the U.S. as of Spring 2005. The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance of a spouse's ties to a foreign country and the possible effect they may have on applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Disqualifying conditions E2.A2.1.2.1. *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident, or present in, a foreign country,* and E2.A2.1.2.2. *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists,* apply.

Foreign influence concerns raised by the foreign citizenship and/or foreign residency of family members to whom one is bound by ties of affection or obligation may be mitigated where it can be determined that the relatives are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (*see* MC E2.A2.1.3.1.).⁽⁹⁾ None of Applicant's relatives in India are agents of a foreign power. Of those siblings who work outside the home, his sister works as a teacher in an upper primary school. His brother-in-law works for an oil company partly owned by the state, but there is nothing about his job as a geophysicist that suggests military, intelligence gathering, or security duties. Applicant's sister-in-law is a professor of the Sanskrit language.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. Rather, the foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability to be influenced by coercive or non coercive means, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, App. Bd. Feb. 24, 2003). Given India is the largest democracy in the world and its continued economic growth depends significantly on maintaining friendly relations with the U.S., it is not likely India is going to exert overt pressure on its citizens. Yet even nations with democratic traditions and a history of respect for human rights do not always have common interests. As recently as 2000, India was known to actively engage in the targeting or acquisition of U.S. sensitive financial, trade, or economic policy information, proprietary economic information, or critical technology information. There exists the potential for undue foreign influence as long as Applicant's relatives remain subject to the laws of a foreign country and are within physical reach of foreign authorities.

Applicant's financial ties to India are sufficiently substantial, moreover, to increase his vulnerability to undue foreign influence. His ownership share of independent India company A represents only about .0012% of his total assets. However, 58.06% of his total assets are in the U.S. parent company, which depends on its subsidiary in India to perform half of its commercial development work. In addition to a financial stake in the success of the India subsidiary, Applicant has a personal relationship with the president/CEO of the company. As a director who signs the tax returns and reviews the corporate records, Applicant is obliged to follow Indian laws and regulations. Applicant also owns two condominiums in India, as well as two other parcels, and has funds on deposit in accounts in India. While the total value of these foreign non-business assets is about \$56,593 USD, this does not include his share of the business generated by the India subsidiary on behalf of the U.S. parent. Under the circumstances, his foreign financial interests cannot reasonably be described as minimal.

Starting with his acquisition of employment in the U.S. in 1992, Applicant has spent the past 13 years establishing ties to the U.S. He and his spouse married here, and they own their own home, which is valued at about \$950,000. He started his own computer consulting business in 1995 (parent company) that experienced rapid growth until the downturn in the industry but has continued to thrive as a result of mergers. Applicant and his spouse became U.S. citizens in 2001. He acquired a U.S. passport, and has used it exclusively for foreign travel, including on annual trips to India to see family members. While he retained possession of his Indian passport, he did not use it to travel and it has been formally cancelled. Alleged foreign preference concerns are not well taken where his acquisition of U.S. citizenship served to revoke his Indian citizenship. There is no active exercise of dual citizenship. At the same time, he kept a hand in his native India, starting a computer company there in 1998 that has gained some recognition within India for its well-defined, measured processes for software development from analysis to deployment and maintenance. His personal and business lives remain interwoven between India and the U.S. and the situation is not likely to change soon. Indeed, with the expansion of the India subsidiary's business, the potential for undue foreign influence is likely to

increase. Taken together, the foreign familial, business, and financial ties present an unacceptable risk of undue foreign influence.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline L: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline C: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Paragraph 3. Guideline B: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Subparagraph 3.e.: Against the Applicant

Subparagraph 3.f.: Against the Applicant

Subparagraph 3.g.: Against the Applicant

Subparagraph 3.h.: Against the Applicant

Subparagraph 3.i.: Against the Applicant

Subparagraph 3.j.: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. The U.S. company alleged in SOR ¶ 1.b. is seeking the facility clearance (*see* Ex. 9).
3. No adverse inferences are drawn against Applicant because of this lawsuit. There is no allegation by the government that Applicant engaged in any wrongdoing of relevance to his security suitability.

4. Under India's Citizenship Act of 1955, voluntary acquisition of a foreign citizenship is grounds for involuntary loss of Indian citizenship. (Ex. D, E). India does not recognize dual citizenship. Applicant filed no formal application to renounce, but it is not clear that is required. In cancelling his Indian passport in June 2005, the Consulate stated, "We have noted that you have renounced Indian Citizenship and have acquired US Nationality." (Ex. AA)

5. Applicant testified that the company he founded in 1995 merged with the unrelated firm in Fall 2002 to become the company seeking the clearance (U.S. subsidiary). The corporate filings indicate a more complicated merger and acquisitions history for the parent and subsidiary (Ex. 9).

6. The DSS industrial security representative who investigated company E concerning its eligibility for a facility clearance testified Mr. CC had informed her that he was leaving the company. The facility's clearance was still under review as of late June 2005. (Tr. 35)

7. See the U.S. Department of State's *Background Note: India*, dated November 2004.

8. With Mr. CC's departure from the company in April 2004, Applicant took over the positions of secretary and facility security officer as well. (Tr. 74)

9. Given the close bonds of affection and/or obligation that Applicant has himself or through his spouse to these Indian citizens, E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*, does not apply.