

DATE: March 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14052

REMAND DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

Jason C. Perry, Esq., Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

SYNOPSIS

Applicant came to the United States from India in 1964 to better his education. He stayed and worked for a corporation in the United States. He has been a United States citizen since 1981. His wife and children are also United States citizens. He saw an opportunity to improve his life, and left the corporation to form his own business which was successful. The business opened an India subsidiary for business reasons which joined organizations in India to improve software development. He has a brother, sister, and in-laws who are residents and citizens of India. He has mitigated security concerns for his family and business activities in India. Clearance is granted.

STATEMENT OF THE CASE

On August 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on August 24, 2004. The SOR alleges security concerns under Guideline L (Outside Activities), and Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on September 30, 2004. He admitted the allegations under Guidelines L and B, with explanations. He requested a hearing before an administrative judge, and the request was received by DOHA on October 4, 2004. Department Counsel was prepared to proceed with the case, and a hearing before another Administrative Judge was held on May 17, 2005. The Administrative Judge rendered an unfavorable security clearance decision on July 19, 2005. The DOHA Appeal Board issued a decision on September 28, 2005, remanding the case for a new hearing and decision before a new administrative judge. The case was assigned to me on September 28, 2005. Applicant requested a delay of the hearing. A notice of hearing was issued on November 9, 2005, and the hearing

convened on December 15, 2005. The testimony of the Applicant and two of Applicant's witnesses were received during the hearing. The transcript (Tr.) was received on January 5, 2006.

PROCEDURAL RULINGS

Five government exhibits were introduced at the hearing. Government Exhibit 5, the transcript of the previous hearing, was not admitted since the case was remanded for a new hearing.⁽¹⁾ The government offered three documents for administrative notice, but I took administrative notice of only two of the documents, Court Exhibits 1 and 3.⁽²⁾ Applicant offered 30 exhibits, and 23 exhibits were admitted.⁽³⁾ A witness was unable to attend the hearing on December 15, 2005, because of a death in the family, and Applicant requested the record be held open for the witness to testify. The parties stipulated to the testimony after the hearing, which was admitted as Applicant Exhibit GG.

Applicant moved to amend the SOR based on the testimony received at the first hearing. The parties were unable to stipulate to the facts from the first hearing. Since the Appeal Board remanded the case for a new hearing, I determined there was no record or basis in fact to amend the SOR. The motion was denied.⁽⁴⁾

Applicant made a continuing objection during the hearing to the presentation of any information, documents, or testimony concerning Applicant's United States based company. Applicant's basis for the objection was essentially that the status of the company and any information concerning the company was not relevant to Applicant's personal security clearance. The objection was overruled and testimony concerning the company was admitted as relevant to the security concerns raised under Guideline L.⁽⁵⁾

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 63-year-old computer systems engineer who presently serves as the Director of Global Business Development for a computer service company he founded. He was born in India where he received bachelor and master degrees in physics. He came to the United States in 1964 for higher education. He received a Masters of Business Administration (MBA) degree from a United States university in 1966.⁽⁶⁾

Applicant became a United States citizen in 1981. He is married with two grown children. His wife was born in India, lives in the United States with Applicant, and presently does not work outside the home. She became a United States citizen in 1986. His two children, a daughter who is a professor at a United States university, and a son who is a doctoral student at a United States university, were born in the United States, are married, and are United States citizens.⁽⁷⁾ Applicant is financially solvent, and owns his house in the United States.⁽⁸⁾

After earning his MBA degree, Applicant began working for a large United States company specializing in the manufacturer of large construction equipment. He worked for this company for 20 years and was Director of Management Information Systems when he left. He saw an opportunity to keep high-wage, high technology jobs in the state where he lived, and to start a new career and make more money. He left the equipment manufacturing company and founded his own computer services company in 1986.⁽⁹⁾

Applicant's parents are deceased: his father in 1960, and his mother in 2001. Applicant has a brother and sister who are residents and citizens of India. They both reside in the area of India where the family originated. Neither his brother nor sister have ever asked about his work in the United States. They have never been approached by anyone in India about Applicant's work.⁽¹⁰⁾

Applicant's brother is older than him, has both a bachelor's and a law degree, and manages a farm in India. His sister-in-law lives with his brother and does not work outside the home. His nephew and niece (brother's children) both live in the United States. The niece works as a doctor for a United States government agency. Applicant's brother never worked for any government entity in India, nor served in the military forces of India. He receives no pension or other benefit from India. Applicant talks to his brother by telephone three or four times a year, and sees him when he visits India on

his business travels. The last time he visited his brother was in December 2004 when he was in India on business. He also attended his nephew's wedding in India in July 2004. [\(11\)](#)

His sister is younger than him, a college graduate, but never worked outside the home. Her husband retired as a bank executive in India but is now deceased. His sister receives a pension from the bank. His sister has two daughters, one living in Singapore, the other in India. Neither his sister nor her husband ever worked for any government entity in India or served in the military of India. He talks to his sister three or four times a year by phone to discuss their children, and he sees her when he visits the area of India where she resides. The last time he saw her was his visit to India in December 2004, and for the wedding in July 2004. [\(12\)](#)

His mother-in-law and father-in-law are both residents and citizens of India. His father-in-law is 93, retired as an executive with a private fertilizer company, and lives on his pension. He never worked for any government entity in India, nor served in the military forces of India. His mother-in-law is 87, and never worked outside the home. He occasionally speaks to his wife's parents when they call his wife, and they have occasionally called him on his birthday. His wife calls her parents, but he never initiates a call to them. He has never discussed his work with them, and they have never been approached by anyone about his work. He last saw them on his visit to India in July 2004 when they all attended his nephew's wedding, and on a business trip in December 2004. [\(13\)](#)

Applicant inherited real property from his father who inherited the property from his father. The property has been in his family for many generations. The property is owned jointly by he and his wife. When his mother became ill, he built a house on the property as his mother's residence. Since his mother's death, he rents the property, managed by a rental company, for \$700 per month. The rent goes into a bank account in India, jointly owned by he and his wife since 1996, to pay for the upkeep of the property, and the management company fees. He receives no benefit or proceeds from the rental of the property. [\(14\)](#)

Applicant also inherited farm property with his brother and cousins when his father died. The land has been in the family for a long time. His brother manages the farm, and all the income goes to his brother. He does not derive any benefit from the operation of the farm property. [\(15\)](#)

Applicant travels extensively for business purposes. He admitted he visited India at least 31 times from 1996 to 2003, as alleged in the SOR. His visits to India were mostly for business over sight reasons. He did not meet with anyone from the government of India. He did meet with his family members in India. He also visited his mother when she was alive. He only holds a United States passport and he used that passport for all of his travels. He has continued to travel extensively on business since the SOR was written. Many of his trips were to give speeches or attend software development conferences. [\(16\)](#)

As president of his company, Applicant hired the employees. He hired three individuals based on recruiting trips to computer science programs at colleges in the United States. The three employees were citizens of India, but computer science students at United States universities. At the time he hired them, they were attending school on a student visa. After hiring them, his company sponsored them for permanent resident status. He does not know if they have become United States citizens. He hired them not because they were from India, but because they were the best candidates available for the positions. The majority of students in computer science programs in the United States are foreign citizens and not native-born United States citizens. [\(17\)](#)

As noted above, Applicant founded a computer service company, specializing in software development, in the United States in 1986. The company prospered and had over 180 employees during the height of the technology boom. It received awards from both trade groups and the local state government. In addition to the equipment manufacturing company, Applicant's former employer, the company had contracts for software development with non-Department of Defense government agencies and other United States based computer software companies. [\(18\)](#) Applicant served as the President and Chief Executive Officer, and was the majority stockholder. In late 2002, the company decided to pursue contracts for software development on classified United States government projects. The company applied on December 4, 2002, for both a facilities clearance and individual security clearances for executives and other employees. An interim

[\(19\)](#)

facility clearance was granted on December 30, 2002. Applicant was also granted an interim security clearance. However, there were concerns about Applicant's security worthiness and his interim security clearance was withdrawn on August 30, 2004. ⁽²⁰⁾ To permit the company to continue the facility clearance, Applicant withdrew as President, Chief Executive Officer, and Chairman of the Board of the company, and became Director of Global Business Development. A long term employee with a personal security clearance was appointed President and Chairman of the Board. Applicant relinquished shares in the company to his son and was no longer the majority shareholder. He was excluded from access to any classified information. ⁽²¹⁾ A new application for a facility clearance was submitted on September 1, 2004, and the company was granted a final facility security clearance on September 7, 2004. ⁽²²⁾

After transferring by gift some of his shares in the company to his son, the son held 32% of the shares and Applicant 21%. Since the shares are not publicly traded, Applicant is not sure of the value of the shares. Between Applicant and his son, they were the majority shareholders. The son has no background in business and has no active role with the company. Since the corporation was a closed corporation, the son cannot sell his shares on the market but must sell them back to the company. If Applicant is granted a clearance, there is no agreement that his son must return the shares to Applicant. However, Applicant will reclaim his role of Chief Executive Officer (CEO) if he is granted a security clearance. As CEO, he would be responsible for the strategic direction of the company and the President would handle the operational issues of the company. Applicant, in effect, would be back in charge of the company. ⁽²³⁾

Applicant's United States based company established a wholly-owned subsidiary in India to provide lower cost software development solutions for the company. The decision to establish the subsidiary was based on the suggestion of one of his largest United States customers to seek low cost software development solutions in a foreign country. ⁽²⁴⁾ The subsidiary's customers are large United State corporations and computer service companies that also do business in India. The subsidiary is located in the same area of India where Applicant was born, and is chartered under the corporate laws of India. It has no contact with any entity of the government of India. The subsidiary employees about 22 people and has yearly contracts valued at between \$100,000 and \$200,000. Applicant has no personal financial interests in the company except through his role with the parent company in the United States. While Applicant's company has received some small profits from the operation of the subsidiary, Applicant has never directly received any profit. ⁽²⁵⁾

The subsidiary is managed and operated by a Director. The original and present director were hired by Applicant and both were residents and citizens of India. The present director has a doctoral degree in software development. Applicant participated in the company by providing strategic direction. His United States based company does not control the day-to-day operations of the subsidiary. It is anticipated the United States based company will continue a working relationship with the India based subsidiary in the future. ⁽²⁶⁾ The establishment of the India subsidiary company was a business decision based on business needs and requirements. ⁽²⁷⁾ When Applicant's security clearance was questioned, he resigned from his position as a Director of the subsidiary in March 2005 and no longer participates in managing the subsidiary. ⁽²⁸⁾ If granted a security clearance, he does not intend to resume a role as director of the subsidiary, even after assuming a role with the United States based company. ⁽²⁹⁾

In 2000, Applicant founded an educational institute formed by the India subsidiary company to honor a United States university professor of computer science for his pioneering work in the process of software development, and to improve software development. ⁽³⁰⁾ The basic concept was a testing process for software to resolve problems with the software before delivery to the customer. The methodology used and taught by the institute are used worldwide and particularly advocated by the United States university where the professor being honored taught. The institute is wholly owned by the India subsidiary, located in Applicant's home region in India, and incorporated under the laws of India. At one time, he was a director of the institute providing strategic direction to ensure the basic concepts of the institute were accomplished. He did not have any involvement with the day-to-day operations of the institute. The director of the India subsidiary was involved with the day-to-day operations of the institute. Applicant has never received any payments or funds from the institute. ⁽³¹⁾ When his security worthiness was questioned, Applicant resigned from his position and does not have any involvement with the institute. ⁽³²⁾ If granted a security clearance, he does not intend to return to any function with the institute. ⁽³³⁾

Applicant suggested that his India subsidiary company form a consortium with three other India software development companies to assist in competing with larger companies for software development contracts. The companies used the same methodology of software development professed by the institute. They are not physically one company but a loose federated network that because of combined size can better compete for contracts. Applicant has never been a member of the consortium except as the individual suggesting to his subsidiary and the other companies the benefits of the consortium. The consortium did not work and they were unable to develop any contracts. His only connection with the leadership of the other companies were about five meetings with senior management during 2002 and 2004 to motivate the adoption of the consortium. He never received any profit or remuneration from the consortium. [\(34\)](#)

The India subsidiary is a member of the Software Technology Park of India (STPI), an autonomous non-profit organization formed by a ministry of the government of India to promote and facilitate software exports from India. The government of India does not control any of the operations of the companies in the STPI nor impose any requirements on them. Membership in the STPI permits the companies to facilitate importation of capital goods for their businesses. Other United States software development companies are also members of the STPI. He had no responsibility for the formation of the STPI, or the decision by the subsidiary to join the STPI. The former director of the India subsidiary made the decision to belong to the STPI. [\(35\)](#)

Applicant has actively provided service to his local community. He and his company partnered with a local college to create a program to educate and train workers in software development. He served on the Industry Advisory Board of a local university, and a business students' group at another university. He taught college level courses at these schools. [\(36\)](#) He presented lectures and made speeches on software and software development world wide. He served on local community boards, and assisted the local Red Cross in developing a computer program to track the local blood supply. He worked with newspapers and local businesses to bring internet services to their community early in the technology revolution. He served on the boards of a local university and a program to assist at risk children. [\(37\)](#) He worked with a local college to retrain and hire underemployed professionals from non-computing fields for careers in information technology. The focus of these programs was to hire women and minorities. [\(38\)](#) Applicant's company in the United States has been recognized by the information technology industry and the state government for its work in creating jobs in the state and local area. [\(39\)](#)

I have taken administrative notice that India is not a hostile country nor are its interests inimical to the United States. The United States and India are the world's largest democratic republics and enjoy good relations. The United States is India's largest trading partner. Although there have been concerns about nuclear proliferation, the United States and India share a common goal of promoting stability in Asia and fighting terrorism. While there is a threat of terrorism in India, as well as in most areas of the world, the area of India where Applicant's family resides is not listed as an area of safety or security concern, or of instability because of terrorism. [\(40\)](#) In addition, the United States government encourages small and medium size companies to expand their business opportunities in India. Many United States based companies, including large computer service and software development companies, have subsidiary companies and do business in India. [\(41\)](#)

POLICIES

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." [\(42\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(43\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁴⁴⁾ An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁽⁴⁵⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽⁴⁶⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽⁴⁷⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽⁴⁸⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁴⁹⁾ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽⁵⁰⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."⁽⁵¹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽⁵²⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline B - Foreign Influence: A security risk may exist when an individual's immediate family, 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.

Guideline L - Outside Activities: There is a security concern for involvement in certain types of outside employment or activities if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline B - Foreign Influence

Under Foreign Influence Disqualifying Condition E2.A2.1.2.1, it may be disqualifying where (*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*). An immediate family member includes father, mother, sons, daughters, brothers, and

sisters. ⁽⁵³⁾ There is a rebuttable presumption that an applicant has ties of affection, or at least obligation, to members of his spouse's family. ⁽⁵⁴⁾ Applicant has presented no information or evidence to rebut this presumption. Additionally, Applicant occasionally talks to his in-laws when they call his wife, he sees them on visits to India, they attended his nephew's wedding in India, and they have called him on his birthday. This information shows Applicant has close ties of affection or obligation to his in-laws. The brother, sister, and in-law are citizens and residents of India. I conclude the disqualifying condition has been established.

Applicant sees his siblings and in-laws occasionally, mostly when he visits India on business. He does talk to them three or four times a years. He attended his nephew's wedding which his siblings and in-laws also attended. This is a picture of a close family that maintains contact with each other. I conclude the contact is not casual or infrequent and Foreign Influence Mitigating Condition E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual or infrequent*) does not apply.

The Foreign Influence Mitigating Conditions that must be evaluated concerning the relatives in India is E2.A2.1.3.1 (*a determination that the immediate family members 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 persons involved and the United States*). As noted above, Applicant has the burden of presenting information to refute, extenuate, or mitigated the security concern established by the government. Applicant presented information that his brother is a farmer and his sister a widowed housewife who has not worked outside the home. His father-in-law is a retired banker and his mother-in-law has also not worked outside the home. None of them have ever worked for any government entity or political organization in India or served in the military of India. The issues for this mitigating condition are bifurcated and Applicant must first establish the immediate family members are not agents of a foreign power, and if not, that they are not in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to the persons involved and the United States. Since his siblings do not work for the government or political organization, and are a farmer and a housewife, and the in-laws do not work for the government or political organization and are retired, Applicant has established that they are not "agents of a foreign power." ⁽⁵⁵⁾

In analyzing if they can be exploited, a factor to consider, while it is not determinative, is an analysis of the character of the government of the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a United States citizen through relatives and associates in that country. India is not a hostile country nor are its interests inimical to the United States. The United States and India are the world's largest democracies, and enjoy good relations. The United States is India's largest trading partner and our government encourages trade and business with India. Although there have been concerns about nuclear proliferation, the United States and India share a common goal of promoting stability in Asia and fighting terrorism.

The vulnerability to duress of Applicant's relatives in India is important. None of the relatives worked or have worked for the government. The brother is a farmer and his sister is a widower who has never worked outside the home. The in-laws were never employed by the government and are a retired banker and a homemaker. This lessens the opportunity for adverse influence. Also, Applicant's vulnerability to duress is important. He has been in the United States for over 40 years (since he was 21), and a United States citizen for over 25 years. His immediate family, wife and children, are all United States citizens living and working in the United States. He owns his own business in the United States that he started and made prosperous. All of his financial interests, excepted inherited property in India, are in the United States. While Applicant has made many trips to India, they were primarily for business purposes. Only a limited number, to visit his ailing mother when she was alive and to attend a wedding, were for personal reasons. Considering his extensive ties to the United States, it appears Applicant is not unusually vulnerable to duress.

Applicant's financial interests in India raise Foreign Influence Disqualifying Condition E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence*). Applicant's business interests in India are a minimal financial interest. He drew no salary from any of interests and the profits from the subsidiary were small. The institute, consortium, and membership in the STPI provide no financial benefit to Applicant or his business. The property he owns was inherited from his father. He does

not receive any income from farm property and the rent on a house previously used by his mother goes to a bank account to pay for rental agents and the up-keep of the property. These financial interests are so minimal they do not make Applicant vulnerable to coercion, exploitation, or pressure. Applicant presented sufficient information to established Foreign Influence Mitigating Condition E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

In addition, Applicant hired three citizens of India as computer systems engineers for his company. He hired them because they were students at United States universities majoring in computer science and the best candidates available for the positions. Most students of computer science at United States universities are foreign born students. He did not hire the three because they were from India but because they were the best candidates available. His business sponsored them for permanent resident status, and encouraged them to become United States citizens. This does not indicate he has a preference for hiring individuals from India for his business.

I have considered all of the above information. I conclude Applicant has mitigated the security concerns under Guideline B for foreign influence.

Guideline L, Outside Activities

The government has presented information raising security concerns under Guideline L. Applicant's activities of security concern are his involvement with a subsidiary company that does business in India. The subsidiary, at the urging of Applicant, was a founding partner in a consortium of companies seeking software development work in India. Applicant worked with the subsidiary and others to establish an institute to foster quality software development processes. The subsidiary became part of a non-profit group to facility doing software development in India. Applicant's connection to these activities could pose a conflict with his security responsibilities and could create an increased risk of unauthorized disclosure of classified information. This raises Outside Activities Disqualifying Condition E2.A12.1.2.4 (*Service with any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology*). Applicant's outside activities in India deal generally with software development. There is no information that the software development business is "engaged" in protected technologies. However, there is a potential that the software development may potentially affect protected technologies. I conclude these outside activities has raised the potentially disqualifying condition.

Applicant's decisions and reasons for engaging in activities in India were based on business needs. The subsidiary was established because his company's largest customer at the time thought an entity outside the United States was needed to obtain lower cost software development solutions. The Institute was established to honor a professor from a United States university and to enhance and improve the quality of software development for business purposes. The subsidiary joined the consortium and STPI to enhance its business practices. Applicant did not derive any personal benefit or profit from the activities. The institute, the consortium, and the STPI did not provide any extensive income or profit for Applicant's United States based company. They do not and cannot do any of the classified work for his business in the United States. Applicant's involvement with the activities in India was not extensive. He was not involved in the operations of the subsidiary. While he recommended and championed the establishment of the institute and the consortium, he was not involved in their management or daily operations. The same is true for the STPI which was joined by the subsidy for business reasons. I have evaluated his activities considering Outside Activities Mitigating Condition E2.A12.1.3.1 (*Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities*).⁽⁵⁶⁾ His activities in India were done to enhance business. The activities of he and his company are similar to the activities of other United States companies doing business in India. I conclude Applicant's outside activities do not pose a conflict with his security responsibilities. Applicant has mitigated any security concerns for his outside activities in India.

I carefully considered all of the circumstances in light of the "whole person" concept. Applicant's life story is an example of the success of many immigrants to the United States. He came to the United States early in his life to better himself through education. He has been here and a citizen for over 40 years. His wife and family are also citizens and have also prospered in America. Applicant stayed here working for many years for a corporation moving up their corporate ladder as a senior leader. He saw an opportunity to better himself and others and left the company forming his own company. His company and others prospered, and he was a successful business man. He did not sit on his laurels

garnering wealth but gave back to his local community doing many activities to better the community. All of his activities in India were for business purposes, and are minimal. He has established that his activities and family in India are not a security risk. I conclude Applicant is eligible for access to classified information.

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 L FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2, Guideline B FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 41-44.

2. Tr. 44-55.

3. Tr. 56-85.

4. Tr. 5-23; Motion to Amend the Statement of Reasons to Conform to the Evidence, dated Dec. 5, 2005.

5. *See*, Tr. 84-120; 180-261.

6. Tr. 181-185.
7. Tr. 187-190.
8. Tr. 227; Applicant Exhibit BB (Federal Tax Return 2004, dated Apr. 2005); Applicant Exhibit CC (Financial Statement, dated Jul. 22, 2005).
9. Tr. 224-227.
10. Tr. 213, 216.
11. Tr. 209-213.
12. Tr. 213-217.
13. Tr. 217-222.
14. Tr. 222-224, 226.
15. Tr. 226-227.
16. Tr. 230-235; Applicant Exhibit DD (Travel list, August 2002-December 2005).
17. Tr. 241-244.
18. Tr. 237.
19. Tr. 86- 101; Applicant Exhibit K (Standard Form 328, dated Dec. 4, 2002).
20. Applicant Exhibit K (Standard Form 328, dated Dec. 4, 2002), at 10.
21. *Id.* at 14-18.
22. *Id.* 19-20.
23. Tr. 239-241, 264-270.
24. Tr. 294.
25. Tr.102-106, 244-250.
26. Tr. 272-284.
27. Tr. 277-279.
28. Tr. 106-107, 245-249; Applicant Exhibits A-C (Letter of Resignation and Acceptance, and letter concerning remuneration, dated Mar. 1, 2005).
29. Tr. 297-298.
30. Tr. 294-296; Applicant Exhibit F (Software Award, Feb. 15, 2005).
31. TR. 297-298.
32. Tr. 250-252; Applicant Exhibit D (Letter of Resignation, dated Mar. 1, 2005); Applicant Exhibit E (Letter of Acceptance of resignation, dated Mar. 7, 2005).

33. Tr. 251-255, 284.
34. Tr. 255-258, 285-288 , 296.
35. Tr. 260-263, 288, 296.
36. Tr. 196-202; Applicant Exhibit I (Letter from college president, dated May 5, 2005).
37. Tr. 205-208; *See*, Applicant Exhibit AA (List of Community Activities and speeches given by Applicant); *See*, Applicant Exhibit GG (Stipulated Testimony, dated Dec. 30, 2005).
38. Tr. 160-173.
39. Tr. 190-196; Applicant Exhibit G (Blue Chip Award, 1999); House Resolution 199, dated Apr. 6, 2001).
40. *See*, Court Exhibit 1 (Consular Information Sheet, dated Feb. 1, 2005); Court Exhibit 3 (Patterns of Global Terrorism, dated Jun. 22, 2004).
41. Applicant Exhibit S (Department of Commerce, IT Export Report, India, dated May 2004).
42. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
43. Directive ¶ E2.2.1.
44. *Id.*
45. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
46. *See* Exec. Or. 10865 § 7.
47. Directive ¶ E3.1.14.
48. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
49. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
50. ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).
51. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
52. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
53. Directive E2.A2.1.3.1.
54. ISCR Case No. 01-03120 (App Bd. Feb. 20, 2002) at 8.
55. The Appeal Board has stated an employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of this mitigating condition. *See*, ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) at 4-5. The term "Agent of a Foreign Power" is a word of art that has a statutory definition for access to classified information purposes. 50 U.S.C. § 1801 (b) defines "agent of a foreign power" as a person who is basically an officer or employee of a foreign power in the United States, involved in clandestine intelligence activities or international terrorism. This definition is made applicable to access to classified information purposes by 50 U.S.C. § 438(6). Under either the statutory or Appeal

Board definition of "agent of a foreign power," Applicant's relatives in India are not agents of a foreign power.

56. I have considered Outside Activities Mitigating Condition E2.A12.1.3.2 (*The individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.*) While Applicant did relinquish his position as President of the company, I conclude that he will resume leadership of the company if granted a security clearance. Under these circumstances, the mitigating condition would not apply.