

DATE: December 11, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-08116

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn Hoffman, Esquire, Department Counsel

Ray T. Blank, Jr, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is potentially subject to foreign influence because his father is a citizen and resident of India, who only recently retired from 27 years of service in government organizations. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 9 June 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of unresolved foreign influence concerns.<sup>(1)</sup> He answered the SOR on 28 July 2005 and requested a hearing. DOHA assigned the case to me 23 January 2006 and I convened a hearing 28 February 2006. DOHA received the transcript (Tr.) 9 March 2006.

**FINDINGS OF FACT**

Applicant admitted the Guideline B allegations of the SOR, except for 1.d.<sup>(2)</sup> Accordingly, I incorporate those admissions as findings of fact. Applicant, a 30-year-old, part-time software engineer for a defense contractor since February 2003, seeks access to classified information. He has not previously applied for a clearance.

Applicant was born in the United States in November 1975 to parents who were native-born citizens of India, temporarily residing in the U.S. but not in diplomatic status. Thus, he acquired U.S. citizenship by birth and Indian citizenship through his parents. When he was about two, he returned to India with his parents, traveling on his mother's Indian passport. He grew up in India, and was educated there, obtaining his undergraduate degree in approximately 1997. Under Indian law, he reached the age of majority in 1993, when he turned 18.

In June 1997, Applicant went to work in India for a wholly-owned subsidiary of a U.S. corporation. In December 1997, he obtained his U.S. passport and used it to travel to the U.S. on company business several times between then and

August 1999.

While Applicant was employed in India, he was applying to graduate schools in the U.S., and was accepted to a program in 1999. Since August 1999, his principal means of support has been income from work as a graduate research assistant at the university where he was pursuing, first, his master's degree in electrical engineering--awarded in August 2003--and now his doctoral degree in electrical engineering. He also works part-time for the defense contractor in support of a government research agency. He lives in graduate student housing at the university. He is not married and has no children.

Applicant's sister was also born in the U.S., and resides here. His brother is an Indian national attending college in the U.S. on an educational visa. He has a cousin who is an Indian national residing in the U.S., but he has little contact with her. His mother is a citizen and resident of India, and has been a life-long housewife.

Applicant's father is a citizen and resident of India, with a doctoral degree in mechanical engineering. From 1977 to 1996, he was employed by a government-owned aircraft company in India. From 1996 to his age-mandated retirement in September 2004, he was employed by the Indian government's defense research and development organization. When he retired, he became the principal of a private engineering college. According to Applicant, his father has no pension from either of his government jobs, but does have the income from a 401K-like account to which the government made matching contributions. In the past, Applicant has given his parents small monetary gifts, but nothing recently.

Applicant describes himself as close to his parents, and has weekly telephone contact with them. They visit him about once a year in the U.S. He visited them in India for about a month in both December 2000 and December 2001. He used his U.S. passport each trip, and states that he had to obtain a visa from the Indian government to travel on his U.S. passport. He has not been back to India since. He states that he does not intend to return to India to live.

When Applicant was in college and working in India, he had a couple of different bank accounts, long since closed. He states he did not vote in Indian elections while living there. He did not indicate if he had voted in U.S. elections since coming to the U.S.

The government research agency section head who has supervised Applicant for the last three years considers him a technically gifted engineer. He applauds his security consciousness, because Applicant complies with the agency requirements that he remain in his unclassified work area unless he is with the required escort. He believes Applicant should obtain his clearance.

India is a democratic, parliamentary, federal republic with a generally good human rights record. India has been supportive of U.S. efforts in the global war on terrorism. However, India has an effective intelligence operation in the U.S., and is an active collector of U.S. economic and industrial information.

### **POLICIES AND BURDENS**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. <sup>(3)</sup>

### CONCLUSIONS

The government established a case for disqualification under Guideline B, and the Applicant failed to completely mitigate the security concerns. Regarding his mother (SOR 1.a.) and brother (SOR 1.c) the record demonstrates that neither is an agent of the Indian government nor positioned in any fashion to be a focal point of influence on Applicant. The same is true of Applicant's cousin (SOR 1.e), with the additional factor that the evidence shows no ties of affection or obligation to Applicant. Accordingly, I resolve subparagraphs 1.a., 1.c., and 1.e. for Applicant. The small monetary gifts Applicant made to his parents (SOR 1.f), even if considered financial assistance, raise no independent security concerns under Guideline B. At most, the gifts are evidence of Applicant's affection toward his parents. I resolve subparagraph 1.f. for Applicant.

Applicant's father (SOR 1.b.) presents a different issue, however. Applicant maintains regular contact with his parents. His affection for them is clear. <sup>(4)</sup> But unlike his mother, a life-long housewife, his father was a life-long employee, in one capacity or the other, of the Indian government. <sup>(5)</sup> His recent retirement does little to mitigate the security concerns represented by his longstanding contacts within the Indian government. With regard to the Applicant, he is very much in a position to be exploited, not perhaps by negative pressure, but certainly by positive pressure. Consequently, Applicant does not meet the provisions of mitigating condition 1. <sup>(6)</sup> And given the regularity of his contacts with both parents in India, he does not meet the provisions of mitigating condition 3. <sup>(7)</sup>

Applicant asserts that his loyalties are to the U.S., but there is little hard evidence to support that assertion. His only active exercise of U.S. citizenship was obtaining his passport in 1997. His personal circumstances since coming to the U.S. in 1999--full-time pursuit of post-graduate degrees--offer little indication of an ongoing commitment to U.S. interests. His U.S. birth aside, he presents a portrait of an individual who in all important aspects is a citizen of India. There remains an unacceptable risk that his future decisions will be influenced by concerns for India or for his parents, whose interests may or may not be completely consistent with those of the United States. Ultimately, a decision to grant access to classified information must be based on the assessment that, in the words of the Directive, "it is clearly consistent with the national interest" to do so. Unstated--but clearly meant--is the requirement that a grant of clearance be consistent with "U.S." national interest, a conclusion I am unable to reach on the record before me. His evidence fails to overcome the government's security concerns I resolve Guideline B against Applicant.

### FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph a: For Applicant

Subparagraph b: Against Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For 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 denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. In denying that he had a joint bank account with his father in India, he provided documentation that the account in question was an individual account in his father's name. Further, the government produced no evidence that the account held significant funds, even if the account were found to be jointly held in Applicant's name. Consequently, I find SOR 1.d. for Applicant.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. 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;
5. E2.A2.1.2.3. Relatives. . .who are connected with any foreign government;
6. E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by 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.
7. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;