

Department of Defense effective September 1, 2006. The guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on June 27, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on October 3, 2007. Counsel for Applicant entered his appearance on October 22, 2007.

On November 8, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Two government exhibits (Ex. 1-2) and ten Applicant exhibits (Ex. A-J) were admitted. Applicant and one witness, a friend who has known him since early 2004, testified, as reflected in a transcript (Tr.) received by DOHA on November 21, 2007.

RULINGS ON PROCEDURE

On September 12, 2007, the government requested administrative notice be taken of several proposed facts concerning Nepal and India. The request concerning Nepal was based on publications of the U.S. State Department: *Background Note: Nepal*, dated May 2007; *Country Reports on Human Rights Practices-2006*, dated March 6, 2007; *Consular Information Sheet: Nepal*, dated June 27, 2007; *Travel Warning: Nepal*, dated May 7, 2007; and *Country Reports on Terrorism*, Chapter 2, dated April 30, 2007. Concerning India, the source documents were the State Department's *Background Note: India*, dated December 2006; *Country Reports on Human Rights Practices-2006, India*, dated March 6, 2007; *Background Note: Iran*, dated June 2007; and *Consular Information Sheet: India*, dated July 17, 2007; the Congressional Research Service's report for Congress, *India-U.S. Relations*, updated June 26, 2007; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2000*; and the Office of the National Counterintelligence Executive's *Annual Report to Congress on Foreign Economic Collection and Espionage-2005*.¹

On October 5, 2007, I informed the parties that consistent with DOHA Appeal Board rulings stressing consideration of the most current political conditions in foreign countries (*see* ISCR Case No. 05-11292, Apr. 12, 2007), I intend to review for purposes of taking administrative notice an updated travel warning on Nepal issued by the State Department on September 24, 2007. No objections were filed to the request for administrative notice or to my consideration of the updated travel warning. After weighing the reliability of the source documentation, including the updated travel warning, and assessing the relevancy and materiality of the facts proposed, I took administrative notice of certain facts pertinent to Nepal and to India as set forth below.

FINDINGS OF FACT

DOHA alleged under Guideline B that Applicant's parents (SOR ¶ 1.a) and two of his three brothers (SOR ¶ 1.b) are resident citizens of Nepal; that his sister is a resident citizen of India (SOR

¹The functions previously exercised by the National Counterintelligence Center, such as issuing the annual report on foreign economic collection and industrial espionage, have been assumed by the Office of the National Counterintelligence Executive.

¶ 1.c); that his other brother resides in India as well but as a citizen of Nepal (SOR ¶ 1.d); that Applicant owns a small parcel of land in Nepal (SOR ¶ 1.e); that he has a bank account in India into which he transfers about \$700 monthly to care for his family (SOR ¶ 1.f); and that he traveled to Nepal and India in July 2000, October 2001, and December 2003 (SOR ¶ 1.g). Applicant admitted the allegations, but offered in mitigation that his parents spend most of their time in India, that he had already applied for his sister and one brother's immigration to the U.S., and was in the process of doing the same for his parents and other two brothers. He added that his brothers were all in India where they are pursuing college degrees. As for his property in Nepal, Applicant indicated it was owned by everyone in the family, and that the significant elements of his net worth (savings, retirement accounts, real estate) are in the U.S. He described the amount in his overseas account as small and to help his parents and siblings with their expenses. The purpose of his travel in 2000, 2001, and 2003 was to spend time with his relatives, and he volunteered that he went to India in April 2007, again to see his family members. Applicant indicated that his spouse and children are native U.S. citizens, and that he and his spouse take seriously the obligations of U.S. citizenship.

After a thorough review of the pleadings, exhibits, and transcript, and having agreed to take administrative notice, I make the following additional findings of fact.

Applicant is a 38-year-old engineer who has worked for his present employer since October 2006. He is seeking his first security clearance.

Applicant was born in Nepal in January 1969 to Nepali resident citizens who had followed the family avocation of Hindu priest. His parents did not hold formal jobs but lived off of what they were offered in exchange for their services and from cultivating a small plot of land they owned. There was no school in his district in Nepal, so the family moved across the border to his mother's native India where Applicant and his sister attended school. His sister was born in India in January 1964. His parents subsequently returned to the village in Nepal, and had three more sons, who were born in February 1974, February 1980, and March 1983.

After finishing his schooling in engineering (he holds an electrical engineering certificate) and hospitality management in India, Applicant moved to Kathmandu in 1991. Until 1994, he was employed full-time as a manager of a five star hotel, and as a part-time science and math teacher at a local high school. In June 1994, Applicant came to the U.S. on a business visa. A few weeks after he arrived, he learned of sporadic ethnic violence between Hindus and Muslims on both sides of the border between Nepal and India. With the tourist economy in Nepal declining, and uneasy about the ethnic tensions, Applicant applied for political asylum in the U.S. While his application was pending, he was authorized to work in the U.S. He began employment with a hotel who eventually sponsored him for labor certification. In October 1996, he renewed his Nepali passport.

In about late 1997, Applicant began corresponding by computer with his future spouse. He noticed her profile on an ethnic marriage website, and discovered they had mutual friends. She was employed as a software engineer in a distant U.S. state. After some high-tech dating and a couple of in-person meetings, he relocated to her area in December 1998, and they married in January 1999. His spouse's parents emigrated from India to the U.S. in the late 1950s and became naturalized U.S. citizens. Applicant's spouse and her sister were born in the U.S. On his marriage to a U.S. citizen, Applicant withdrew his labor certification and asylum applications.

In March 1999, Applicant began working as a sales manager for a hotel. In January 2000, he began studies toward a bachelor of science degree in information technology while continuing to work in the hotel industry. In April 2000, he got his first job as a software engineer at a networking internet company. From July 28, 2000, to August 11, 2000, Applicant traveled to Nepal and India to visit his parents and siblings.

From December 2000 to January 2004, Applicant was employed as a senior software engineer for a company in his local area. In September 2001, Applicant renewed his Nepali passport for another five years, and he traveled to Nepal and India from October 20, 2001 to November 5, 2001, and from December 5, 2003 to December 25, 2003, to visit family members.

In January 2004, Applicant was laid off. He was unemployed for over a year, except for some short term consulting work in 2005. He finished his studies for his bachelor of science degree, and cared for their first child, a son, who was born in December 2004. He also acquired his U.S. citizenship in September 2004, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. Applicant obtained a U.S. passport on October 7, 2004, and returned his Nepali passport to the Embassy of Nepal. He understood that by becoming a U.S. citizen and turning in his passport he was no longer a citizen of Nepal.

In April 2005, Applicant began working for a defense contractor as a software lead for future combat systems. Applicant accepted the job in part because of its onsite daycare. Because of the potential for classified work on the program, Applicant executed a security clearance application on April 29, 2005. He disclosed that his parents and two of his brothers were resident citizens of Nepal, that his middle brother was a Nepali citizen residing in India, and that his sister was a resident citizen of India. Applicant also indicated that he owned a small parcel of land in Nepal from birth that he had held a Nepali passport but returned it to the Nepali embassy following his U.S. naturalization, and that he had traveled to Nepal and India for pleasure in 2000, 2001, and 2003.

On February 16, 2006, Applicant was interviewed for his clearance. He indicated that he maintained a bank account in India into which is deposited funds for his relatives.

Applicant played a key role in the special test and demonstration activities involving a ground sensor program. He was dedicated to his work and trustworthy with respect to the information associated with the program. Yet in October 2006, he elected to leave that job to work for his present employer, a larger defense contractor in the region, for its better benefits, including flexibility and job security. His clearance application was transferred to his current employer.

In December 2006, DOHA asked Applicant to provide details concerning his foreign financial interests. Since he may inherit the land that his parents own in Nepal, Applicant responded that he had interests in Nepal as well as India: a small piece of land with an estimated value of \$5,000 USD² and checking/savings accounts for family expenses with an estimated \$9,000 USD on

²Applicant testified that he does not own the property in Nepal ("Directly, I don't own anything., I stand to inherit, as I, and that was one result of analysis paralysis in my mind at the time of filling out initially the statement of reasons and everything else. I interpreted, since I stand to inherit as something that I stand to own, but the fact is I don't directly own anything else, they are all—in the name of my parents. I may inherit the small piece of land that my parents

deposit. He was sending about \$700 per month from his U.S. account to the account in India. At DOHA's request, Applicant estimated his net worth at \$575,000 (real estate, cash, bank accounts, vehicles, furniture, jewelry, personal effects, household furnishings). Applicant added that his spouse, who works for the same employer at a different facility, has an existing security clearance, and that he was committed to fulfilling his obligations with integrity that is consistent with the U.S. national interest.

As a performance excellence engineer on a Homeland Security program, Applicant is involved in mission assurance, making sure that engineering teams deliver their products on time and correctly. A program security manager who had previously worked with Applicant in early 2007 attests to Applicant's "tireless dedication to getting the job done." (Ex. J) A senior principal engineer who met Applicant at a cultural learn-at-lunch series at the company has observed nothing that would cause him to question Applicant's integrity or lead him to believe that Applicant would act contrary to the interests of the U.S. or their employer. A principal quality engineer who coached Applicant on a qualification project found Applicant to be committed to the success of the company and its customers.

Applicant's spouse is a senior systems engineer. She is employed by the same defense contractor as Applicant, but at another facility. She held a security clearance from 1992 to 1997 for her duties with a previous employer and has held a secret-level clearance in her present job since 2003. All of her immediate family members are resident citizens of the U.S. A lifelong resident, she has no plans to move outside of the U.S. She and Applicant have been briefed about their responsibilities to report any planned foreign travel to their security officer so they can receive the appropriate briefing.

Applicant and his spouse own their home in the U.S. Their total net worth in the U.S. is about \$730,450.25. Applicant has donated his time to a local shelter, cooking, delivering and serving meals at least once a month. Applicant and his spouse are involved in a society for women engineers. He has also volunteered his time to educate Girl Scouts in a science and engineering badge event.

Since 2006, Applicant's parents have resided with Applicant's brothers in India primarily but spend a few months with Applicant and his family in the U.S. Applicant's brothers, all Nepali citizens, are full-time students at the same university in India. The oldest of his brothers, who had been an accountant, moved to India to pursue an undergraduate degree in computer applications, starting in July 2005. He plans to earn his degree in July 2008. Applicant's other brothers are seeking their master's degrees in computer applications, which they expect will be awarded in 2010. The youngest brother moved to India from Nepal in 2006, and commenced his graduate studies in January 2007. The other brother earned his bachelor's degree in India. All three brothers are expert yoga teachers and they earn enough to meet most of their educational expenses.

Applicant still sends his relatives in India about \$700 monthly so the two younger brothers can finish their educations sooner. The funds are deposited into Applicant's credit union savings account in the U.S. that is linked with a non resident account in India. Applicant transfers the funds online into his account in India, and from there into his brother's account at the same bank. His

own which is, you know, a rough equivalent, it can be no, of no greater value than \$5K U.S., as we speak, and that divided by five, I roughly say I stand to inherit roughly worth \$1K U.S."). (Tr. 92)

relatives do not have control over Applicant's account. Applicant's sister is a widow who lives with her in-laws in a locale over a day-and-a-half journey by train from her brothers in India. She never worked outside of the home. Applicant's family members in India are aware he and his spouse are engineers, but otherwise know little about their jobs. Applicant contacts his brothers weekly by email. He speaks with his relatives by telephone a few times per month or as necessary. He is in touch with his sister once every couple of months. None of his family members intends to return to Nepal to live.

Applicant's parents and siblings intend to immigrate to the U.S. Applicant filed the immigration petitions for his sister and the eldest of his three brothers in September 2006. Applicant intends to apply for his parents' immigration as soon as one of his siblings emigrates to the U.S. or if one of his brothers comes to the U.S. for employment. Since he and his spouse are employed full-time, Applicant wants a sibling here to help his parents acclimate to life in the U.S. Applicant, his spouse, and their two young children traveled to India to see his relatives in April 2007. Applicant transferred extra funds into his account in India so they would have funds available to them during their trip. As of November 2007, Applicant's total deposits in the bank in India amounted to 125,018 India National Rupees or about \$3,125.45 USD.

I note the following facts with respect to India and Nepal and their respective relationships with the U.S. India is a stable multiparty federal democratic republic with a bicameral parliament. The central government has broad administrative powers in relation to its states. Indian society and political organization are determined largely by the Hindu caste system of occupational and social hierarchies, although the influence of those factors has been diluted if not subsumed in the economically prosperous and heterogeneous cities. The Indian government generally respected the rights of its citizens in 2006, although serious problems persisted in some areas, in part because of a lack of accountability in the government and security forces and lax enforcement of the human rights laws. Human rights abuses and terrorist acts have been committed in recent years by separatist guerrillas, Maoist insurgents from Nepal, and other terrorists, due to longstanding internal factional and ethnic conflicts.

Long an active member of the UN, India remains a leader in the developing world and the non-aligned movement. It has a long tradition of participating in UN peacekeeping operations. India was identified as an active collector of sensitive U.S. economic information in 2000. The U.S. recognizes India as key to strategic interests and has sought to strengthen its relationship with India, especially since 2004. Both countries are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. Differences with the U.S. over India's nuclear weapons program and pace of economic reform exist. India has growing energy ties with Iran that involve the construction of a pipeline to deliver Iranian natural gas to India through Pakistan. The U.S. opposes this, but is committed to continuing a strong, dynamic partnership with India. In June 2005, the U.S. and India signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two-way defense trade and increasing technology transfer opportunities. The current U.S. administration is committed to assisting India in meeting its energy needs through sharing civilian nuclear technology and increasing cooperation in science and technology to address public health and environmental concerns.

Nepal is an ethnically diverse country wedged between the People’s Republic of China and India. Nepal was established as a parliamentary democracy under a constitutional monarch in November 1990, but the decade was marked by a succession of governments, including the world’s first communist monarchy. In February 1996, the Communist Maoist United People’s Front began a violent insurgency, waged through killing, torture, bombing, kidnaping, extortion, and intimidation against civilians, police, and public officials. “Imperialist” U.S. and “expansionist” India were the targets of considerable Maoist venom. In November 2006, the Maoists entered into a comprehensive peace agreement with the Nepali government to end the decade long insurgency, and in January 2007, an interim constitution was endorsed. On April 1, 2007, the ruling eight-party government through a political consensus formed an interim Council of Ministers that includes five Maoist ministers.

The interim constitution expresses full commitment to democratic ideals and norms, including competitive multiparty democracy, civil liberties, fundamental human rights, adult enfranchisement, periodic elections, press freedom, an independent judiciary, and the rule of law. Incidents of human rights violations by government security forces, which had been numerous and grave before April 2006, declined substantially. Maoists continued to engage in violence, extortion, abductions, and forced recruitment of school children. Sporadic incidents of terrorism and politically-motivated violence in major urban areas, including near-simultaneous blasts of improvised explosive devices at three locations in Kathmandu in September 2007 led the U.S. Department of State to warn U.S. citizens contemplating travel to Nepal. Ethnic tensions have led to random, indiscriminate violent clashes between Maoist splinter groups and indigenous groups, and to closures of the southern border with India. Maoist demonstrators have stopped and in some cases attacked diplomatic vehicles, including those of the U.S. Embassy.

The U.S. has designated the Communist Party of Nepal (Maoist) as a global terrorist organization. Maoists are excluded from the U.S. and U.S. citizens are barred by law from contributing funds, goods, or services to, or for the benefit of, the Maoists. The government of Nepal formally lifted its designation of the Maoists as a terrorist organization on May 3, 2006. As of 2007, the U.S. is the only country to maintain its designation of the Maoist insurgency as a terrorist organization.

Nepal is a member of the United Nations and of the World Trade Organization. Relations between the U.S. and Nepal have always been friendly. Since 1951, the U.S. has provided more than \$791 million in bilateral economic assistance to Nepal. Nepal also receives substantial external assistance from India, the United Kingdom, Japan, Germany, and the Scandinavian countries. The Nepali Army has contributed significantly to UN peacekeeping missions. The U.S. has given \$21.95 million in grant assistance to the Nepali Army, and many Nepali Army officers attend U.S. military schools, conferences, and seminars. Nepal has generally had good bilateral relations with China since 1956. Nepal has traditionally had close relations with India because of strong cultural, religious, linguistic and economic ties. India and Nepal restored trade relations in 1990 after a break caused by India’s concerns over Nepal’s relationship with China.

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 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). 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 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline B—Foreign Influence

Under Guideline B, foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6) Applicant’s parents and three brothers are Nepali citizens currently living in India, and his sister is an Indian citizen who resides with her in-laws in India.³ Disqualifying condition (DC) ¶ 7(a) (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) applies.

In SOR ¶ 1.e, the government alleged that Applicant owned a small parcel of land in Nepal, based apparently on his assertions of ownership on his clearance application, during a subject interview in February 2006, and when he answered the SOR. However, Applicant testified credibly—with no rebuttal from the government—that the property is in his parents’ names. Since his is an inheritance interest of limited value (one-fifth share worth about \$1,000 USD) it is not likely to subject him to the heightened risk of foreign influence that is contemplated within DC ¶ 7(e) (*a*

³The government did not move to amend the SOR to reflect that his parents (SOR ¶ 1.a) and two of his three brothers (SOR ¶ 1.b) are now living in India and not Nepal as originally alleged. The SOR is not measured against a standard of perfection, and DC ¶ 7(a) applies whether they are living in Nepal or India.

substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation).

As alleged, Applicant has an account with a banking institution in India into which he deposits about \$700 per month (SOR ¶ 1.f). He also traveled to Nepal and India in July 2000, October 2001, and December 2003, and to India only in April 2007 to visit his parents and siblings (SOR ¶ 1.g). His financial support for his relatives and his travels abroad are relevant to the extent they demonstrate the closeness of the bond Applicant shares with his relatives in India. His deposits on account in India—about \$3,125.45 USD—amount to less than 1 percent of his total net worth, so they are not a substantial foreign interest. Routine contacts with officials at the border do not raise the concerns contemplated within DC ¶ 7(j) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*).

Applicant's bonds of affection and/or obligation with his parents and siblings are clear. Not only does he support them (primarily his two youngest brothers) financially, but he also has sponsored his sister and the eldest brother for immigration to the U.S. The ties are too strong to meet the first prong of mitigating condition (MC) ¶ 8(a) (*the nature of the relationships with the foreign persons, the country in which these persons are located, or the positions or activities of those persons in the country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*).

The political situation in Nepal remains a relevant consideration because of the Nepali citizenship of his parents and brothers. Yet, his parents and brothers are all residing in India, more than a day and a half's drive from the border with Nepal, and are considerably less vulnerable to influence from Nepal.

As for the potential for coercion from India, I am mindful India and the U.S. do not always share the same interests (*e.g., Pakistan, India-Iran ties*). However, it is unlikely India, the world's most populous democracy, is going to jeopardize its friendship with the U.S. by exerting improper influence on Applicant's relatives who live a low profile existence. His parents never held jobs other than as Hindu priests. The eldest of his brothers had previously worked as an accountant, and is now pursuing an undergraduate degree in computer applications. Both younger brothers are undertaking graduate study in the same discipline. Applicant's sister is a widow who does not work outside the home. MC ¶ 8(a) applies.

Furthermore, in the unlikely event of undue foreign influence from Nepali or Indian authorities, Applicant can be expected to resolve any conflict in favor of the U.S. (¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in the U.S.*)). Since coming to the U.S. on a business visa in June 1994, Applicant has developed very significant ties to the U.S. (education, career, home ownership, citizenship, marriage to a native U.S. citizen). Within months of his arrival in the U.S., he wanted

to stay (“it was soon after, a few months after I started working here in the United States. And then it was part of that desire that prompted me to pursue the labor certification, in spite of the fact that I had the existing other application pending. So at that point, professionally and legally, I wanted to leave no stone unturned that would allow me, that would allow me to stay in the United States.” Tr. 125). He chose to become a U.S. citizen with the understanding he would no longer be a citizen of Nepal, and has applied for his sister and the eldest brother to immigrate to the U.S. Applicant has become active in his community, helping at a homeless shelter and educating women about careers in engineering. Consistent with the whole person evaluation required under AG ¶ 2(a), coworkers have found him to possess personal integrity and dedication to his job. Applicant testified that he has been briefed and has complied with the reporting responsibilities regarding foreign travel. Applicant’s commitment to his life in the U.S. is evident. So while he does have close bonds to his family members, citizens of Nepal and/or India who reside in India, he can be expected to resolve any conflict of interest in favor of the U.S. interest. MC ¶ 8(b) applies.

FORMAL FINDINGS

Paragraph 1. Guideline B:	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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

DECISION

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

Elizabeth M. Matchinski
Administrative Judge