



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



In the matter of:)
)
-----) ADP Case No. 08-08567
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

October 13, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated trustworthiness concerns regarding her connections to India under Guideline B (Foreign Influence). Applicant’s eligibility to occupy a public trust position is granted.

Statement of the Case

On April 29, 2008, Applicant completed a Questionnaire for Public Trust Positions (SF 85P) (Government Exhibit (GE) 1). On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her (GE 7), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised; Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges trustworthiness concerns under Guideline B (Foreign Influence). 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 Applicant's eligibility to occupy a public trust position, which permits access to sensitive information, and recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On March 20, 2009, Applicant responded to the SOR allegations and elected to have her case decided by a hearing before an administrative judge (GE 8). On May 21, 2008, Department Counsel indicated she was ready to proceed. On May 26, 2009, the case was assigned to another administrative judge. On June 1 and 25, 2009, DOHA issued hearing notices (GE 5, 6). On June 30, 2009, the case was transferred to me. On July 8, 2009, DOHA issued a hearing notice (GE 4). On August 12, 2009, the hearing was held as scheduled (Transcript (Tr.) 4; GE 4). At the hearing, Department Counsel offered three exhibits (GE 1-3) (Tr. 15-16), and Applicant offered 10 exhibits (Tr. 18-21; AE A-J). There were no objections, and I admitted GE 1-3 (Tr. 16), and AE A-J (Tr. 21). Additionally, I admitted the SOR, response to the SOR, and three hearing notices (GE 4-8). I received the transcript on August 20, 2009. On September 4, 2009, Department Counsel provided her closing argument and copies of AE K and L. I admitted AE K and L into evidence.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning the Republic of India (hereinafter India) (Tr. 16). Department Counsel provided supporting documents to show detail and context for these facts in the Administrative Notice request. See the India section of the Findings of Fact of this decision, *infra*, for the material facts receiving administrative notice concerning India.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted the SOR allegations in her SOR response with some explanations (GE 8). Her admissions are incorporated herein as findings of fact. After a

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor (Tr. 5, 22). She was born in India and lived there until she was 25. She is a senior software engineer (Tr. 22). A defense contractor has employed her for about 16 months (Tr. 23). She does not currently occupy a public trust position (Tr. 6). She has been married for 12 years and has two children, ages eight and three years old (Tr. 22). Her husband is a naturalized U.S. citizen and her children were born in the United States (Tr. 39-40; AE F, G).

In 1997, she received her education through the master's degree level in India (Tr. 5). In 1999, she and her husband immigrated to the United States (Tr. 23, 37).

Applicant's mother and father are citizens and residents of India (SOR ¶ 1.a of GE 7; GE 8). Her father is a 70-year-old retired engineer, who worked for a company that was a semi-government entity (Tr. 24; SOR ¶ 1.b of GE 7; GE 8). He has been retired for about 12 years (Tr. 24). Her mother is a 55-year-old professor at a private university in India (Tr. 23). She contacts her parents about once a month (Tr. 26). Her mother has visited the United States three times, most recently in 2007, when Applicant's youngest child was born (Tr. 42). She does not discuss her government-related work with her parents or her brother (Tr. 36).

Applicant's brother is a 27-year-old lieutenant in the Indian armed forces (Tr. 25-26; SOR ¶ 1.c of GE 7; GE 8). He has served in the armed forces for two years (Tr. 26). He does not have access to Indian classified information (Tr. 29). She talks to him about three or four times a year (Tr. 26).

Applicant traveled to India in December 2002, December 2004, and January 2008 (Tr. 26-27; SOR ¶ 1.d of GE 7; GE 8). On each visit, she stayed in India for three or four weeks and visited her family (Tr. 27). She has not visited India since January 2008, and does not have any plans to visit India (Tr. 28).

In December 2007, the Indian government issued to Applicant a lifelong Republic of India visa for Overseas Citizenship of India (OCI).² She received her OCI visa after obtaining U.S. citizenship in October 2007 (Tr. 28; SOR ¶ 1.e of GE 7; GE 8). At her hearing, she offered to provide her OCI visa to her security manager (Tr. 38). She renounced her Indian citizenship (Tr. 39). On August 17, 2009, she sent a letter to the Indian Consulate renouncing her OCI visa (AE K at 1). She provided a copy of her OCI visa with a cancelled stamp on it (AE K at 2).

Applicant does not have any financial interests in India (Tr. 29). She owns four properties in the United States (Tr. 30-34; AE B-E). She lives in one property, and the other three are residential rental properties. The total value of the four properties is about \$1,500,000 (Tr. 32-33). Her equity in her real estate properties is about \$350,000

²See description of OCI status in the OCI section of this decision, *infra* at page 5.

(Tr. 38). Her U.S. 401K account is worth about \$150,000 (Tr. 35). She also owns U.S. stocks valued at about \$50,000 (Tr. 35-36). She and her husband's annual salaries total about \$200,000 (Tr. 36). Her husband is a software engineer (Tr. 37).

An Assistant Project Manager at Applicant's employer cited Applicant's strong ties and allegiance to the United States and opined that she did not pose any risk to her project (AE A). He believes a favorable decision "will greatly benefit our country by enabling her to contribute positively" to the important endeavor she is working on for her employer (AE A). Applicant volunteers her time to help others in her community (AE I).

Applicant emphasized her desire to be a good U.S. citizen because of the equity and fairness of the United States (Tr. 40). Her allegiance is to the United States (Tr. 40). If someone from the Indian government contacted her and threatened to terminate her father's pension unless she provided sensitive information, she would refuse to provide the information and report the foreign contact to her security officer (Tr. 41).

India

India is a multiparty, parliamentary, federal, secular democracy with a population of 1.1 billion. It has 28 states and seven union territories. The United States and Indian relationships have strengthened during the past 10 years. Previously, the relationship between the United States and India was strained by India's development of nuclear weapons in contravention of international conventions.

The United States recognizes India as key to its strategic interests and has sought to strengthen its relationship with India. The two countries are the world's largest democracies. Both countries are committed to political freedom as well as representative government. They share common interests in the free flow of commerce, in fighting terrorism, and in the establishment of a strategically peaceful and stable Asia.

Currently, the United States is India's largest trading and investment partner. In 2004, the United States and India agreed on multiple initiatives involving, energy, trade, democracy promotion, and disaster relief. In 2005, a joint statement between the two countries noted that India should acquire the same benefits and advantages as other states with advanced nuclear technology.

In 2006, Congress passed the Henry J. Hyde United States - India Peaceful Atomic Cooperation Act, which allows direct civilian nuclear commerce between the United States and India. This agreement enables India to buy U.S. nuclear reactors and fuel for civilian use. Also, it removed and/or revised several U.S. export requirements for dual-use and civil nuclear items.

In 2002, the United States began selling weapons systems to India. In 2007, a U.S. defense contractor negotiated a one billion dollar deal with India for the purchase of military transport aircraft along with related equipment, training and services. In January 2008, the United States government approved the one billion dollar deal.

Currently, U.S. defense contractors are competing with weapons manufacturers from other countries for a ten billion dollar contract to sell multi-role, combat aircraft to India.

The Indian government generally respects the rights of its citizens, but numerous serious human rights problems remain. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability has permeated the government and security forces, creating an atmosphere in which human rights violations have gone unpunished.

India is one of the most terror-afflicted countries in the world. In 2008, more than 2300 people died from terrorist incidents in India. The attack in Mumbai in November 2008 killed approximately 180 people. A number of other violent attacks have been committed in recent years by separatist and terrorist groups. Terrorism is concentrated in Kashmir, a disputed area bordering Pakistan where radical activists are present; central India, where Maoist rebels are fighting on behalf of landless laborers; and southern India, where Hindus and Muslims periodically clash.

The United States has some diplomatic disagreements with India. For example, differences over India's nuclear weapons program and pace of economic reform exist. The United States is concerned about India's relationship with Iran, including India's increasing cooperation with the Iranian military.

There have been some well-documented cases in the last several years involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to India, including technology and equipment that were determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. Foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology, and acquisition of sensitive U.S. technology by foreign private entities does not slow its flow to foreign governments or its use in military applications.

Overseas Citizenship of India (OCI) status³

The Constitution of India does not allow one to hold Indian citizenship and citizenship of a foreign country simultaneously. In 2006, India created the OCI status. With OCI status a person is not allowed to vote, hold constitutional office, or hold posts in the Indian government services sector. A person receiving OCI status does not receive Indian citizenship along with OCI status. A person applying for OCI status must be a citizen of a country that allows dual citizenship. There are other conditions and limitations on approval of OCI status not pertinent to this decision.

³A Consulate General of India information paper on Overseas Citizenship of India is the source for the information in this section (AE H). See *also* ISCR Case No. 07-13232 at 4 (A.J. Mar. 31, 2008) (stating same), *affirmed*, ISCR Case No. 07-13232 at 2-3 (App. Bd. July 8, 2008).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. 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 have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information or sensitive 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), as amended and modified. This same standard for access applies for those persons assigned to sensitive duties. Regulation ¶ C6.1.1.1

Eligibility for a public trust position is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

The government reposes a high degree of trust and confidence in persons with access to sensitive information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. Denial is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for granting access to sensitive information.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to sensitive information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her access to sensitive information].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant trustworthiness concern is under Guideline B (Foreign Influence).

Foreign Influence

AG ¶ 6 explains the trustworthiness concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. 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 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 ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant was born and educated in India. In 1999, she and her husband immigrated to the United States. In 2002, 2004 and 2008, she visited India for about three or four weeks on each occasion. In 2007, she received an Indian OCI visa. She has frequent contacts with her parents and less frequent contacts with her brother, who is a lieutenant in the Indian Armed Forces. Her father receives a pension from the Indian government.

The mere possession of close family ties with a person living in a foreign country or who is a citizen of a foreign country, is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified or sensitive information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

"The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁴ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, the risk of terrorism, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to coercion or inducements. The risk of coercion, persuasion, inducement, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of India with the United States, places a burden of persuasion on Applicant to demonstrate that her and her husband's relationship with family members who are citizens of and living in India do not pose a security risk.

⁴ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to protect his family members living in India from harm, pressure, enticement, or coercion.⁵ With India's problematic human rights record, problems with terrorism, and industrial espionage as well as other political, economic and military problems in the country, it is conceivable that anyone living in India might be targeted by governmental or non-governmental criminal or terrorist elements in an attempt to gather information from the United States.

India has sought to illegally obtain sensitive technology from the United States. Applicant's connections to her family living in India raise a sufficient concern to require careful scrutiny of all the facts and circumstances. An evaluation is necessary about any possible desire for her to assist relatives living in India by providing sensitive information.

Department Counsel produced substantial evidence of Applicant's contacts with her relatives who are citizens of or live in India to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that 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.;

(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 favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

⁵ An applicant with relatives in Iran, for example, has a much heavier burden to overcome than an applicant with relatives living in India. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See also ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (listing numerous recent cases involving U.S. citizens with Iranian connections whose clearances were denied, and citing no recent cases where the Appeal Board affirmed the grant of a clearance for someone with immediate family members living in Iran).

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 8(a) partially applies; however, AG ¶¶ 8(c), 8(d), and 8(e) do not apply because the U.S. government has not encouraged Applicant's involvement with Indian citizens, her travel to India, or her other Indian connections. Applicant has frequent contact with her father, mother, and brother. Additionally, Applicant has gone to India three times in the last ten years. Her contacts with family members living in India are sufficiently frequent to raise the possibility of her being forced or induced to choose between the United States and the welfare of her relatives, who are citizens of or living in India. Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with his relatives who are Indian citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. There is no evidence that Applicant's relatives, who are Indian citizens or are living in India are or have been political activist(s), challenging the policies of the Indian government. Her brother has served in India's armed forces for two years and is a lieutenant. Her father receives a pension from the Indian government. There is, however, no evidence that terrorists, criminals, or the Indian government have approached, attempted to induce or threatened Applicant or her relatives living outside the United States for sensitive information. As such, there is a reduced possibility that her relatives living overseas or Applicant herself would be targets for coercion, inducement, or exploitation. While the government does not have a burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a very heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." She established that she "can be expected to resolve any conflict of interest in favor of the U.S. interest." When she became a U.S. citizen, her India citizenship was automatically revoked. When she learned the Indian OSI visa raised a security concern, she renounced it and it was cancelled. Applicant voluntarily moved to the United States in 1999 with her husband. She resides in the United States, and did not express any intention of moving back to India. Her two children were both born in the United States, and she and her husband became U.S. citizens. She has bank accounts, a 401(K) account, and four real estate properties in

the United States, and she has no financial interests in India. Her employment is in the United States. She is a volunteer in her community.

AG ¶ 8(f) provides very limited mitigation even though Applicant does not have any financial interests in India. This mitigating condition can only mitigate AG ¶ 7(e), which provides, “a 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.”

In sum, Applicant’s connections to India are less significant than her connections to the United States. Her connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns. Any residual foreign influence security concerns are mitigated under the Whole Person Concept, *infra*.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance or public trust position by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance or public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

A Guideline B decision concerning India must take into consideration the geopolitical situations in that country, as well as the dangers existing in India.⁶ Indian citizens have sought to illegally obtain sensitive U.S. technology and information. It has serious economic, military, political, judicial/legal and social problems. India has a very significant problem with terrorism. If terrorists could obtain important information by threatening or offering inducements to Applicant’s relatives living in India, it is a

⁶ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

reasonable possibility that terrorists or possibly other Indian entities would take those actions.

The United States' relationship with India has substantially improved during this decade. The United States has accepted India as a nuclear power, and the two countries are working together to decrease the risk of nuclear proliferation. The United States is India's largest trading and investment partner. India is the world's largest democracy. The United States and India work closely together to fight terrorism. The United States sells advanced military equipment to India. The positive connections make it less likely that India would use Applicant or her relatives living in India to attempt to obtain sensitive information from Applicant.

Applicant has a significant relationship with India and has frequent contacts with her parents and brother living in India. Applicant lived in India from 1974 to 1999, and received her education in India. Her husband is from India. She traveled to India three times in the last ten years. Her brother is a lieutenant in the Indian armed forces, and her father is receiving a pension from India. She held an Indian passport and Indian OCI visa in the past.⁷ However, she has relinquished her Indian passport, renounced her OCI visa, and her India citizenship was automatically revoked when she became a U.S. citizen.

Applicant has a stronger relationship with the United States than to India because she has chosen to live, and has lived, the last ten years in the United States. She has sworn allegiance to the United States as part of her citizenship ceremony. The United States has provided her employment. She pays taxes to the United States. Her husband and two children are U.S. citizens. I find her statements about her preference for the United States over India to be credible.

Applicant provided a letter from a supervisor about her dedication, responsibility, trustworthiness and professionalism. Although the possibility of attempted exploitation of Applicant is relatively low, Applicant's strong connections to the United States and especially to her U.S. community and employment establish "such deep and longstanding relationships and loyalties in the U.S., [she] can be expected to resolve any conflict of interest in favor of the U.S. interest." See AG ¶ 8(b).

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated trustworthiness concerns pertaining to foreign influence. I take this position based on

⁷Applicant's connections to India are similar to the connections of the Applicant in ISCR Case No. 07-13232 (App. Bd. July 8, 2008). In that case, the Appeal Board unanimously affirmed the decision granting that Applicant a security clearance. In ISCR Case No. 07-13232, the Applicant was born in India, held and then relinquished an Indian OCI visa and passport, and his parents, siblings, and in-laws were citizens and residents of India. *Id.* at 2. The Applicant and his wife went to India four times in the recent past to visit their parents. *Id.* His father was receiving a pension from the Indian government. ISCR Case No. 07-13232 at 3 (A.J. Mar. 31, 2008). His brother was an engineer employed by an Indian state government. *Id.* at 3. Applicant's connections to the United States in ISCR Case No. 07-13232 are similar to the Applicant's connections in ADP Case No. 08-08567.

the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors” and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude she is eligible to occupy a public trust position.

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 B:	FOR APPLICANT
Subparagraphs 1.a to 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

Mark Harvey
Administrative Judge