



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



In the matter of:

SSN: -----

Applicant for Public Trust Position

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ADP Case No. 08-09204

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: B. Daniel Lynch, Esquire

January 8, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant eligibility for occupying an automatic data processing (ADP) public trust position, and recommended referral to an administrative judge to determine whether a trustworthiness eligibility determination should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 19, 2009, and requested a hearing. The case was assigned to me on July 16, 2009, and was initially scheduled for hearing on September 16, 2009, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's eligibility to hold a public trust position. The hearing was rescheduled for October 7, 2009. A hearing was held as rescheduled. At hearing, the Government's case consisted

of three exhibits; Applicant relied on five witnesses (including himself) and five exhibits (A-E) The transcript (Tr.) was received on November 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to hold a public trust position is granted.

Besides the exhibits offered by the parties, I took administrative notice of three documents: *Background Note: India*, U.S. Department of State (November 2009); *Consular Information Sheet*, U.S. Department of State (July 2009); *2008 Country Reports on Human Rights Practices: India*, U.S. Department of State (February 2009). Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 2007); ISCR Case No. 02-24875 (App. Bd. October 2006). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in India.

Procedural Issues and Rulings

Before the close of the hearing, Department Counsel moved to amend the SOR to conform to the presented evidence of Applicant's brother and sister being citizens and residents of India. For good cause shown, Department Counsel's motion to amend was granted. Subparagraph. 2.f was added to the SOR to read as follows: "Your brother and sister are citizens and residents of India." Applicant's admissions to the amended allegation were added to the SOR (Tr. 111).

Prior to the close of the hearing, Applicant requested leave to keep the record open to enable him to supplement the record with additional endorsements. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to reply. Within the time permitted, Applicant supplemented the record with three additional endorsements. They were admitted as exhibit F.

Summary of Pleadings

Under Guideline C, Applicant is alleged to: (1) exercise dual citizenship with India by possessing an Indian passport issued in April 2007, and due to expire in March 2017, and (2) intend to obtain an overseas citizenship of India card.

Under Guideline B, Applicant is alleged to: (a) have a mother who is a citizen and resident of India, (b) own property in India, which he inherited from his father, (c) have a bank account in India, (d) be employed by a company affiliated with his employer through common ownership and management by an Indian-based company, and (e) have traveled to India in December 2002 and December 2007.

Under Guideline E, Applicant is alleged to have falsified his application for a public trust position (SF-85P) by stating he completed his Master of Science degree in computer science engineering (MSCSE) in September 1996; whereas, he had not been awarded his MSCSE degree at the time he completed his application.

In his answer, Applicant admitted all of the allegations in the SOR with explanations. He claimed (a) he is required to surrender his Indian passport to the Indian consulate upon receiving citizenship of a foreign country and (b) he is considering filing (albeit, he had not yet done so) for an overseas citizenship of India card (OCI) for the sole purpose of making it more convenient to visit India.

Applicant explained in his response that he intends to file for U.S. immigration papers for his mother; he intends to sell his India property and purchase a home in the U.S.; he intends to close his bank account in India after he sells his Indian property; and he traveled to India in 2002 and 2007 to visit his mother and other relatives who reside in India, and not for any other purpose. Applicant claimed he made a mistake in claiming a MSCSE degree on his SF-85P, pending results of two additional courses he needed to complete his degree curriculum.

Findings of Fact

Applicant is a 47 year-old software architect and systems programmer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in India and attended high school there. While a citizen and resident of India, he obtained bachelors degrees in his chosen field of engineering in 1984 (see ex. B).

In February 1993, Applicant immigrated to the United States (U.S.) to pursue graduate studies in engineering. (Tr. 127, 129). Once a resident of the U.S., he enrolled in an accredited graduate school and pursued an engineering curriculum between 1993 and 1996 (ex. 2). He completed all but two thesis-related courses in June 1996, but failed to complete the two added courses necessary for him to receive his degree (see ex. 2; Tr. 90-91).

Applicant married his spouse in 1985 in India; he has one child from his marriage (see ex. 1; Tr. 130). Applicant's wife moved to the United States in 1991, and is currently a practicing cardiologist. Applicant followed his spouse to the United States two years later (Tr. 130-31). Both Applicant and his wife applied for green cards in 1993 and received them in 1998. Once they received their green cards, they applied for U.S. citizenship. They became naturalized U.S. citizens in January 2008 (see ex. 2; Tr. 99-100, 130), and received their U.S. passports in May 2008 (see ex. 1). After obtaining his

U.S. citizenship, Applicant retained his Indian passport. This passport was reissued to him in April 2007, upon expiration of his old Indian passport. His reissued Indian passport was due to expire in March 2017 (see exs. 1 and 2).

In January 2009, Applicant expressed his intention to use his Indian passport to apply to his local Indian consulate for an overseas citizenship card to enable him to obtain a multiple entry visa for visiting his family members in India (see ex. 2). Applicant has since reconsidered and will not apply for an overseas citizenship card, citing restrictions in India's constitution that prevent a foreign citizen from retaining Indian citizenship (Tr. 93-94). He documents surrendering his Indian passport in July 2009 to an Indian consulate, who cancelled the passport (see ex. E; Tr. 92-93, 125). He waited over 18 months after gaining his U.S. citizenship, however, to surrender his Indian passport (Tr. 100, 126). He attributes his delay to "being caught up in work" and the lack of any need to travel during this time frame (Tr. 126).

Applicant's late father was a high-ranking administrative services officer for the Indian government (Tr. 102-03). He retired in 1984 and passed away in 1999 (see ex. 2; Tr. 102). Currently, Applicant has a number of immediate family members who are citizens and residents of India. His mother (age 78) and two siblings (a brother and a sister) are each citizens and residents of the country (ex. 1; Tr. 97, 102, 105-06). His sister is married and has two children (Tr. 124). Neither his mother nor his sister have expressed any desire to emigrate from India (Tr. 97-98, 121-23). His brother has expressed interest in moving to the United States to support his daughter's education pursuits (Tr. 122-23).

Since May 2008, Applicant has been employed by a local software company that was founded by A (a naturalized U.S. citizen) and is a part of a group of companies (including an Indian company) that are affiliated by virtue of common ownership and management (see exs. 3 and F; Tr. 56-60). According to Applicant's furnished documentation, his employer is owned mostly by its founder (A). His employer, in turn, owns a 49 per cent stake in his employer's Indian affiliate (see exs. 3 and E). Other U.S. citizens own 30 to 40 per cent of the Indian company. Most importantly, local Indian residents own no more than 10 per cent of the Indian company according to A's best estimates (Tr. 58). The other affiliated U.S. company founded by A is wholly owned by A's Indian company and is also controlled and managed by A (see exs. 3 and E; Tr. 58-59).

While A is able to exert considerable control over Applicant's employer and its Indian affiliate by virtue of his controlling interests in both firms, the Indian subsidiary has no independent controlling interest in Applicant's employer and no equitable basis to assert any corporate control over Applicant's business decisions. Applicant himself has no working knowledge or involvement in the business operations of his employer and its affiliates in the United States and India.

Before his death in 1999, Applicant's father received a retirement pension from the Indian government (Tr. 103-04). His pension passed to Applicant's mother upon his

death (Tr. 104). His mother has no separate pension of her own (Tr. 104). Applicant has no relatives of either his immediate family or extended family who currently work for the Indian government. He maintains monthly contact with his mother and little contact with either of his siblings (Tr. 113-14). No government or military officials have ever tried to exert any pressure or influence over his immediate and extended family members.

Following his father's death, Applicant inherited property from his father that is located in India. The property comprises two apartments, which are not worth very much in U.S. dollars, no more than \$15,000 (Tr. 95-96, 114). He receives \$1,500 a month in rents from these apartments, which he places in a local Indian bank account to be drawn upon by his brother to defray maintenance expenses associated with the property (see ex. 2 Tr. 115-17). His brother has a power of attorney that permits him to access Applicant's Indian bank account (Tr. 98, 116). When he explored sale possibilities for the apartments, he found the process too complicated and expensive to make their sale cost-effective (Tr. 96, 114-15).

Applicant has no stock purchasing rights with his employer, and no profit sharing rights in his employer's business, or any of the affiliated firms associated with Applicant's company (Tr. 119). Applicant claims substantial property interests in the United States without identifying any specific property interests. The nature and value of his U.S. property interests cannot be determined from the information provided.

Since 1999, Applicant has traveled to India on two occasions to visit his family: in December 2002, and again in December 2007 (Tr. 94, 117). He used his Indian passport on both occasions to enter and exit India. He foresees no need to travel to India in the future (Tr. 95, 124).

India's country status

Considered the world's largest democratic republic, India is also a very diverse country, in population, geography and climate (see *Consular Information Sheet, supra*). India is the world's second most populous country and the world's seventh largest country in area (*id.*).

India is a constitutional democracy whose Constitution defines it as a 'sovereign, socialist, secular democratic republic' (see *Background Note: India, supra*, at 5-6). It is a "multiparty, federal, parliamentary democracy with a bicameral parliament" and has a solid historical reputation for respecting the rights of its citizens (see *id.*). True, there have been reports of extrajudicial killings of persons in custody, disappearances, torture and rape by police and security forces, who generally enjoy de facto immunity (see *2008 Country Reports on Human Rights Practices: India, supra*, at 2-6). The basic problem stems from the lack of any clear accountability, which too often has resulted in cited human rights violations going unpunished (see *id.*, at 1). Police and security officials reportedly use torture and threaten violence during interrogations to extort money and summarily punish prisoners (*id.* at 2-6).

Since gaining its independence from great Britain in 1947, India has been involved in wars with Pakistan in 1947, 1965 and 1971, and has had to defend itself against a 1999 intrusion of Pakistani-backed forces into Indian-held territory that nearly turned into full-scale war ((see *Background Note: India, supra*, at 7). India survived a 1975 declaration of a state of emergency that carried a suspension of many civil liberties (see *id.* at 3). The country has experienced two assassinations of its leaders: Prime Minister Indira Gandhi in October 1984 and Prime Minister Rajiv Gandhi in May 1991 (see *id.*, at 4). In recent years, India has been confronted with sporadic outbreaks of religious riots, which resulted in numerous deaths and casualties, and violent attacks by separatist groups in various parts of the country.

Before its demise in the early 1990s, the Soviet Union was India's principal and most reliable trading partner, and an important source of economic and military assistance (see *Background Note: India, supra*, at 11). Historically, U.S. efforts to strengthen its ties with India have been hampered some by U.S. differences over India's nuclear weapons programs and the pace of India's efforts to achieve long-planned economic reforms.

India today is a nuclear-weapon state, and a responsible nuclear power with an impeccable record for avoidance of unauthorized proliferation of weapons of mass destruction. Nuclear cooperation between the United States and India was considerably enhanced by the strategic partnership reached between the two countries in July 2007 (aka "123 agreement). This agreement governs civil nuclear trade between the two countries and opens the door for American and Indian firms to participate in each other's civil nuclear energy sector (see *Background Note: India, supra*, at 12).

Nevertheless, important U.S. concerns have been raised over reported cases involving government sponsored entities and their illegal export, or attempted illegal export, of U.S. restricted dual use technology to India, including (1) high-tech testing equipment that posed potential risks of diversion to a weapons of mass destruction program, (2) dual use equipment that can be used in military and civilian aircraft to extract engine vibration information, (3) equipment that can be used to manufacture material that improves the accuracy of strategic ballistic missiles with nuclear capabilities, (4) an animation system that can be diverted to weapons of mass destruction technology, (5) nuclear pulse generators to two Indian entities capable of mounting diversion to the development of weapons of mass destruction or missiles, and (6) heat treating containers to an Indian entity capable of mounting diversion to the development of weapons of mass destruction or missiles. These concerns are likely to fill bilateral trade and commerce discussions between these trading partners for the foreseeable future.

Recommended travel restrictions do exist for U.S. citizens visiting India. The State Department cautions U.S. citizens to avoid travel in general (with several noted exceptions) to the state of Jammu & Kashmir (see *Consular Information Sheet, supra*).

SF-85P omissions

Asked to complete an SF-85P in June 2008, Applicant claimed an MSCSE degree from an accredited U.S. technical institute in September 1996 (see exs. 1 and A). At the time, Applicant had not completed his thesis and had been assigned two substitute writing courses, which he needed to complete his course requirements for an MS degree (Tr. 90-91). He listed the MSCSE degree in his SF-85P based on the information provided in his transcript; which states: "Degree granted: MSCSE degree pending results of EE697, CS689" (see ex. 2). Applicant attributes his degree misstatements to a good-faith misunderstanding of the data in his transcript, and not to any intention to falsify his academic achievements (Tr. 91).

Applicant's school transcript documents completion of all of his engineering course work (see ex. 2). His explanations provide plausible accounts and reflect credible mistakes in interpretation of the information contained in his transcripts. Moreover, he attached a copy of his transcript to his interrogatory answers without any request from DOHA (see ex. 2). The transcript lists his degree pending results of two courses (ex. 2). His actions reflect a good-faith effort to clarify any potential mis-impressions about his MSCSE claims in his SF-85P. By all accounts in the record, Applicant made a good-faith effort to voluntarily clarify his MSCSE claims.

Applicant has an excellent reputation for overall honesty with friends and colleagues who know him and have worked with him. Considering all of the circumstances surrounding his MSCSE claims in his SF-85P, his claims warrant inferences that his misstatements about his degree status resulted from his mistaken understanding of his degree receipt, and not from any intention to deceive the Government.

Endorsements

Applicant is well regarded by his supervisors, coworkers, and friends who have worked with him and are familiar with his work and candor. They describe him as a strong team leader with excellent software skills and a high degree of reliability and trustworthiness (see ex. D; Tr. 35-37, 75-76, and 84-85).

Policies

The revised Adjudicative Guidelines (AGs) list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative

judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: "When an individual acts in such a way as to indicate preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." See AG ¶ 9.

Foreign Influence

The Concern: "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 in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under the this Guideline can and should considered 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" See AG ¶ 6.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and

regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Born and raised in India, Applicant married his spouse in 1985, followed her to the United States in 1991, and became a naturalized U.S. citizen in 2008. Trust concerns relate to both foreign preference and foreign influence associated with Applicant's longstanding ties to India, his retention of an Indian passport until recently, his company ties to an Indian firm that is affiliated with both Applicant's firm and another U.S. firm, the presence of his immediate family members in India, and his preponderance of property interests in India. Trust concerns are also raised over the misstatements he made in his SF-85P about his award of an MSCSE degree.

Foreign Preference concerns

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the United States. The issues, as such, raise concerns over Applicant's preference for a foreign country over the United States. By virtue of his birth in India to parents of Indian ancestry, Applicant acquired Indian citizenship and an Indian passport, which he continued to retain even after becoming a U.S. citizen in 2008, and was thereupon required by India's constitution to renounce his foreign citizenship and relinquish his foreign passport. Not until after the issuance of the SOR did he surrender his Indian passport. Whether the delay was due to personal reluctance to part with the passport for convenience reasons, or inertia, is not clear.

Since becoming a naturalized U.S. citizen, Applicant has taken several actions and exercised Indian privileges that reflect active indicia of dual citizenship. Specifically, he renewed his Indian passport in 2004, maintains modest property interests in India., and continues to work for a U.S. firm whose affiliations with another U.S. company and an Indian firm (both of whom are controlled by their founder), subject Applicant's firm to a control relationship with the founder and the three companies he controls directly and indirectly. Like Applicant, the founder is a naturalized U.S. citizen.

By contrast, Applicant holds no material assets in India that pose irreconcilable conflicts of interest or otherwise manifest indica of Indian preference. The apartment units he owns are two small in value (no more than \$15,000) relative to the substantial assets he holds in the United States to create any irreconcilable conflicts of interest. Further, Applicant retains no recognized Indian citizenship or passport, and has never (save for his possession and use of his Indian passport) performed or attempted to perform duties, or otherwise acted so as to serve the interests of India in preference to the interests of the United States, since becoming a U.S. citizen in 2008.

Because Applicant continued to possess his Indian passport after becoming a naturalized U.S. citizen, the Government may apply disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;

- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.”

Applicant surrendered his Indian passport in July 2009, however, and may claim the full benefits of several of the mitigating conditions under Guideline C. MC ¶ 11(a), “dual citizenship is based solely on parent’s citizenship or birth in a foreign country,” is available to Applicant. MC ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” is fully applicable as well to Applicant’s situation. Because he never followed through with his passed expressed intention to apply for an overseas citizenship of India card, once he realized the potential implications such actions could have on his pending application for a public trust position, trustworthiness concerns over this issue have dissipated for the most part.

Whole person precepts are also helpful to Applicant in surmounting the Government’s preference concerns herein. The strong trust impressions he has been able to forge with his supervisors, coworkers and friends who have worked with him add support to his claims that he has undivided loyalty and preference for U.S. institutions and its way of life over those of his birth country (India).

Overall, Applicant persuades that his preference is with the U.S. He meets his proof burden in several ways: relatively little exercise of any privileges associated with his Indian citizenship and passport after his naturalization as a U.S. citizen in 2008. Applicant absolves himself of foreign preference concerns and carries his evidentiary burden on the presented issue of whether his preference lies with his adopted country (U.S.) or the country (India) where he was born and raised as a minor through his parents’ Indian citizenship. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b of Guideline C.

Foreign influence concerns

Applicant and his wife and family have deep roots in India, a country rich in history and socio/political traditions, constitutional government and institutional respect for human rights, intermixed with periodic reports of abuses by police and government authorities. Despite encouraging efforts in the development of strategic partnerships between India and the United States in recent years, there have been cited instances of illegal and damaging export practices by Indian firms associated with the Indian government to create dual use diversion risks.

The Government urges trust concerns over risks that Applicant’s mother, siblings, and other family members residing in India, might be subject to undue foreign influence by Indian government authorities to access sensitive proprietary information in Applicant’s

possession or control. Because Applicant and his wife have family members who have Indian citizenship by birth and reside currently in India, they present potential heightened security risks covered by 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,” of the AGs for foreign influence. The citizenship/residence status of these family members in India pose some potential concerns for Applicant because of the risks of undue foreign influence that could potentially impact the privacy interests subject to Applicant’s control.

Except for Applicant’s father, none of his family members have any identified prior military or government service. Although his mother receives his father’s pension benefits from the Indian government, she has no independent pension benefits that might create potential conflicts of interest. Any potential conflict that might be associated with her deceased husband’s pension benefits is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future. And, from all that is known, Applicant’s spouse does not have any identified prior military or government service that could create potential conflicts of interest. Accordingly, Applicant

Because none of Applicant’s living family or W’s family have any identified family members that could place any of them in any foreseeable conflict situation, no consideration of DC 7(b), “connection 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,” is warranted herein.

Applicant and his immediate family members (*i.e.*, his mother and siblings) residing in India have deep family roots in India. Their citizenship status and presence in India does not by itself create a heightened risk. Applicant’s contacts with his family members are manageable risks, and clearly not of the magnitude that could make them subject to a heightened security risk of pressure or compromise under Guideline B. As a country, India has a lengthy history of constitutional government and generally recognized respect for human rights and the rule of law. It continues to be a country with emerging strategic relationships with the United States in controlling the proliferation of nuclear weapons, and a country that at present does not present a heightened risk under Guideline B.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about India. Unlike the old AGs, the new ones do take into account of the country’s demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency

elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Based on his case-specific circumstances, MC ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.” is available to Applicant. Neither Applicant nor his immediate or extended family residing in India pose heightened security risks that could subject them to potential pressures and influence from Indian government and military officials.

Of benefit to Applicant, too, is MC ¶ 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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s demonstrated loyalty, patriotism, and professional commitments to the United States, is well demonstrated and enough under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate. MC ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation,” has some applicability, too, based on Applicant’s infrequent contacts with his brother and sister.

One other mitigating condition has application to Applicant’s situation. MC ¶ 8(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.” is fully applicable. His financial interests in India (primarily an apartment unit managed by his younger brother) are relatively small, when compared to the substantial interests he holds in the United States, and are not likely to create any problem conflicts in the foreseeable future.

Whole person assessment is available also to minimize Applicant’s exposure to conflicts of interests with his Indian family members. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that any of his family members might be exposed to. So, in Applicant’s case, the potential risk of coercion, pressure, or influence being brought to bear on him, or any of their respective family members is minimal and mitigated.

Overall, any potential security concerns attributable to Applicant's having property interests and family members residing in India are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in India. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Personal Conduct issues associated with Appellant's SF-85P

Trust concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of his misstatement about the status of his MSCSE degree. By claiming award of an MSCSE based on the completion of his course work in his school's graduate program, Applicant mistakenly claimed an actual degree award instead of a degree that was in pending status.

Applicant's erroneous reporting of an MSCSE degree in his SF-85P is attributable to his mistaken belief that he earned his graduate degree and was entitled to list it on his SF-85P. When later asked by DOHA to answer interrogatory questions, about his dual citizenship status, he furnished an unsolicited copy of his official transcript. His explanations and corrections were made in good faith and were based on his understanding that completion of his engineering work entitled him to a degree, and the right to represent his accomplishments. Applicant's explanations, considering both the circumstances surrounding the furnished information at the time and Applicant's overall reputation for honesty and trustworthiness enable him to convincingly refute the falsification allegations.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Subpara.: 1.a: For Applicant
Subpara.:1.b: For Applicant

GUIDELINE B (FOREIGN INFLUENCE): FOR APPLICANT

Subpara. 2.a : For Applicant
Subpara. 2.b: For Applicant
Subpara. 2.c: For Applicant
Subpara. 2.d: For Applicant
Subpara. 2.e: For Applicant
Subpara. 2.f: For applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subpara. 3.a: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to sustain Applicant's eligibility for a public trust position . Eligibility for a public trust position is granted.

Roger C. Wesley
Administrative Judge