



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



In the matter of: )  
)  
) ISCR Case No. 08-10438  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: Ronald C. Sykstus, Esquire

September 29, 2009

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor on December 9, 2007. On June 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); 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. Applicant acknowledged receipt of the SOR on June 19, 2009.

Applicant answered the SOR in writing on June 23, 2009, admitting all of the factual allegations with explanation. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 10, 2009. The case was assigned to me on July 20, 2009. DOHA issued a Notice of Hearing on July 30, 2009, for a hearing on August 20, 2009. I convened the hearing as scheduled. The government offered one exhibit, marked Government Exhibit (Gov. Ex.) 1, which was

received without objection. Applicant submitted 27 exhibits, marked Applicant Exhibits (App. Ex.) 1 through 27, which were received without objection. Applicant and six other witnesses testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr.) on August 28, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Notice of Hearing**

Applicant did not sign for the Notice of Hearing sent by DOHA on July 30, 2009, since he had been suspended from his employment. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant and his counsel discussed with Department Counsel the hearing date of August 20, 2009, prior to the Notice of Hearing being mailed so notice was given more than 15 days prior to the hearing. Even though Applicant did not sign for the Notice of Hearing, he and his counsel waived the 15 days notice requirement (Tr. 8).

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India (Tr. 10-11, Hearing Exhibit I). The request and the attached supporting documents were not admitted into evidence but were included in the record as a Hearing Exhibit. Applicant had no objection to the request for administrative notice or the attached documents. Applicant also presented information for administrative notice purposes concerning India (App. Ex. 20-26, Articles, various dates). The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all the factual allegations in the SOR with explanation. He also provided additional information to support his request for eligibility for a security clearance.

Applicant was born in a small village in India and is 44 years old. He was married in India in 1990, and has two daughters. His oldest daughter was born in India in 1995, and his youngest daughter was born in the United States in 1999 (App. Ex. 6, Birth Certificate, dated October 26, 1999). Applicant, his wife, and his oldest daughter came to the United States in 1997, and received permanent resident alien status in 2001. They became United States citizens in 2006 (App. Ex. 3, 4, 5, Certificates of Citizenship, dated August 2, 2006). His youngest daughter is a United States citizen by birth. His children are completely immersed in the American culture (Tr. 25-30, 71-72).

Applicant excelled in school in India and received his early education at magnet schools in India. He received his bachelor's degree in electronics and communications

in 1988, and his master's degree in computer science in 1990 from a university in India. He then worked for a year as a teaching assistant at the university before being employed in the private sector in India. He worked for an Indian company that was a subsidiary of a United States company from 1991 until 1995. During that time, he visited and worked at various United States sites in 1992 and 1995. He and his family moved to the United States in 1996 to take a position with one of those companies. He then accepted a position at his present location with another company. He is now employed by a defense contractor as a computer programming specialist. He has been suspended from work with the company pending the outcome of his security clearance request. If he is granted access to classified information, the company will bring Applicant back to work (Tr. 30-37).

Applicant admitted that his mother, father, three sisters, and a brother are citizens and residents of India. His other brother is a citizen of India but resides in Singapore. Applicant's parents are in their 70s and are retired. His father was a farmer and his mother a homemaker. He talks to them by telephone about once or twice a month. His brother in India is a quality control supervisor for a pharmaceutical company. His brother in Singapore is a software developer. His sisters are all homemakers. His three brothers-in-law work in agriculture and retail vegetable marketing. He talks to his siblings about once or twice a month. None of his immediate family members have visited the United States. Applicant sends his parents about \$500 per year to assist with their medical expenses (Tr. 44-46, 53-55, 66-67).

Applicant's father-in-law is a resident and citizen of India and is a retired vegetable vendor. Applicant's brothers-in-law are citizens and residents of India. One runs the vegetable vending business since his father's retirement, and the other is a civil engineer for a municipality. Applicant's three sisters-in-law are citizens and residents of India. Two are homemakers and the third is a teacher. The husbands of two of the sisters are retired, one as a civil engineer and the other as a teacher. The husband of the youngest sister-in-law is a teacher. Applicant rarely talks to his in-laws. His wife talks to them about once or twice a month. His father-in-law is the only member of his wife's family who visited them in the United States in 2008 for six weeks. Applicant classifies his relationship with his family as a normal close family relationship (Tr. 44-60, 68-69).

Applicant and his family make trips to India every two years to see their family. Only Applicant made the trip in 2006. Their first trip was in 2000, and they have gone every two years and stay about three to four weeks each time. They stay with his or his wife's family when they visit (Tr. 60-63).

Applicant has financial investments in both the United States and India. He has over \$267,000 in investments in the United States comprising his house and a rental investment house, savings accounts, and mutual funds (App. Ex. 11 through 19, Financial reports, various dates). Applicant opened investments in India after he left India to come to the United States. He and his wife own two residential properties and shares in a computer software company. Applicant and his wife purchased a share in

piece of land for residential use. They built a house on the property for Applicant's mother and father to live in since it is near a medical facility where they receive their health care. While Applicant and his wife purchased the property together, it is listed only in his wife's name. His parents own no interest in the property. The property was listed in the SOR as valued at \$19,000. The initial value was approximately \$41,000, but the value is now about \$30,000 (Tr. 40-42, 69-70). Applicant and his wife also purchased an parcel of land for \$8,000. At one time, it increased in value to \$23,000. Applicant turned the property over to a Hindu temple trust fund for them to use for charitable activities. The value when he gave it to the temple was about \$15,000. He no longer has an interest in this property (Tr. 42-43, 67-68, 70-72). Applicant and his wife also purchased stock in a new Indian software company. His initial investment was approximately \$41,000. The stock fell in value to about \$30,000, and is now worth about \$5,000 (Tr. 44-45; App. Ex. 27, net worth, June/July 2009).

Applicant's wife testified that she was educated in India and received a bachelor's degree in physics and electronics. She came to the United States with her husband in 1996. They first settled in another state and moved to their present location because her husband changed jobs after seven months. They have lived in the same area for about 12 years. At first, she was a homemaker, but in 2005 she and her husband opened an Indian grocery store that she managed. They took on a partner after a year and sold their interest in the store in 2007. She then attended the local college and is studying for a master's degree in accounting. She became a United States citizen in 2006. Her daughters are fully involved in school and community activities, especially soccer and dance. She and her husband volunteer in the schools and help with other activities in the community. They are very comfortable with the school system and the community. She talks to her family in India about once or twice a month. She stays with her family when she visits India. She and her husband have a close family relationship with their relatives in India (Tr. 74-83).

Another witness testified that he was born in India, but came to the United States over 20 year ago. He has a doctoral degree in agricultural science and is a full professor of crop science at the local university. He knows Applicant and his family from their attendance at local Indian cultural events and temple. He sees Applicant and his family about two or three times a month. He opined that Applicant and his family are very pleasant and social. They have visited each others homes. Applicant's daughter taught his son to play soccer. Applicant has an excellent reputation in the local Indian community (Tr. 84-89).

Another witness testified that he was born in Bangladesh and came to the United States in 1981 to complete his education and received a doctorate in physics from a United States university. He taught college for ten years before working for a defense contractor. He is a United States citizen and holds a security clearance. He has known Applicant since 2002 when they were working for the same company. He sees Applicant and his family socially as well. Applicant is perceived as friendly and helpful. He does not believe Applicant poses any threat if he is granted access to classified information. He was a very valuable worker for the company. It was a big loss when he

had to leave because of the lack of a security clearance. He will be coming back to the company if granted a security clearance (Tr. 90-98).

Applicant's neighbor testified that he has known Applicant for over five years as a neighbor. They interact in the neighborhood about two or three times a week. Applicant is perceived as a good person and Applicant's family is a good American family. He does not have any issues with Applicant being granted access to classified information (Tr. 99-103).

Another neighbor testified that she has known Applicant's family for over five years. Their children play together, and Applicant and his wife have watched and cared for her children. She has no problems with granting Applicant access to classified information (Tr. 103-107).

Applicant's supervisor testified that she is an engineer and has a security clearance. Applicant worked for her for about 18 months before being suspended while pending a grant of a security clearance. Applicant is a very competent worker and is polite and courteous. He is well-liked in the company and can accomplish any task assigned. She is aware of Applicant's family members in India, and has no concerns with Applicant being granted access to classified information (Tr. 108-114).

Applicant's former supervisor testified that he has known Applicant for over four years and worked with him for over two years. He saw Applicant daily. He also knows Applicant's family. Applicant was an excellent worker. He does not believe Applicant poses any risk to national security if granted access to classified information (Tr. 114-119).

Applicant presented letters of recommendation and support, and copies of his performance evaluations. Applicant's department manager wrote that he has worked with Applicant since November 2007. Applicant was a very knowledgeable software developer and valued team member. He is a pleasure to work with and is appreciated by the other team members. He is not aware of any questions concerning Applicant's integrity or character (App. Ex. 1, letter, dated July 28, 2009). Applicant's next door neighbor wrote that he has known Applicant and his family for many years. He and Applicant work on yard projects together and he sees Applicant almost every day. Applicant is polite and soft spoken, and he has complete trust in Applicant. He has not heard anything negative about Applicant. (App. Ex. 2, Message, dated August 17, 2009). Applicant's performance reviews shows he meets or exceeds expectations and has many ratings of excellent (App. Ex. 7, 8, 9, 10, Performance Review).

India is not a country hostile to the United States and its interests are not inimical to the United States. The United States and India are the world's largest democratic republics and enjoy good relations. The United States is India's largest trading partner, with trade doubling between the countries from 2004 and 2008. The relationship between the United States and India has been strengthened by growing economic and business interests and the influx of Indian students in United States universities.

Although there have been concerns about India's nuclear program, the United States and India reached an agreement on the status of India's nuclear program.

The United States and India share a common goal of promoting stability in Asia and fighting terrorism. There is a threat of terrorism in India, as reflected in the terror attacks in Mumbai in November 2008. However, the area of India where Applicant's family resides is not listed as an area of safety or security concern or of instability because of terrorism.

The United States government encourages small and medium size companies to expand their business opportunities in India. Many United States based companies, including large computer service and software development companies, have subsidiary companies and do business in India. However, there have been convictions in United States courts of businesses and their employees illegally exporting technology and sensitive products to India.

While the Indian government generally respects the rights of its citizens, there are some problems that still remain. Police employ arbitrary and abusive practices and police corruption is pervasive. The United States and India are natural allies because they share a growing convergence of values and interests. There is still some concern because of India's continued relationship with Iran. The people and the governments of the United States and India engage together in virtually every field of endeavor. There is strong and bipartisan support in both the United States and India to cooperate more closely. Almost every middle class family in India has a relative studying, living, or doing business in or with the United States (Hearing Exhibit 1, App. Ex. 20 through 26, Articles, various dates).

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to

classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . , and has the ultimate burden of persuasion as to obtaining a favorable security clearance.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

Foreign contacts and interests may be a security concern if the individual has divided loyalties, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. 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 consideration 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 ¶ 6).

Applicant has frequent and extensive contact with his immediate family members, who are citizens and residents of India. He talks to his parents and siblings a few times a month. He visits them for a few weeks every two years. He sends his parents funds for their support and purchased a house for their residence. His wife has similar contact with her parents, siblings, and their families. These contacts with his family and his wife's family are extensive, and they raise security concerns under Foreign Influence Disqualifying Conditions (FI DC) AG ¶ 79(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); FI DC AG ¶ 7(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).

I also considered FI DC AG ¶ 7(d) (Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion); and FI DC AG ¶ 7(e) (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). Applicant's in-laws are also considered a security risk for Applicant since he and his wife live together and she has close contact with her family members who are citizens and residents of India. Applicant still owns a residential property in India and has shares in an Indian software development company.

The mere existence of foreign family members is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contact with his and his wife's family members must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The property or financial interest must also subject Applicant to a heightened risk. "Heightened" is a relative term denoting increased risk over some normally existing risk that can be said to be inherent anytime a family member lives subject to a foreign government. Factors that heighten the risk in Applicant's case are terrorist activities in India, and India's relationship with Iran.

Applicant presented evidence to mitigate the security concerns for his family members in India. I have considered Foreign Influence Mitigating Conditions (FI MC) AG ¶ 8(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.); FI MC AG ¶ 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 favor of the U.S. interest); FI MC AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation); and FI MC AG ¶ 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).



Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not “in a position to be exploited.” The underlying premise was that an applicant should not be placed in a position where he or she is forced to make a choice between the interest of the family member and the interest of the United States. There was no balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the United States interest. The nature of the terrorist threat in India, as well as India's continued relationship with Iran, places a burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant's relationship with his family is close, so there could be a circumstance where Applicant is placed in a position of having to choose between his family members and the interests of the United States.

India has experienced terrorist activities in its country, but not any more than other countries. It is a democracy with strong economic, social, and political ties to the United States, even though it has an ongoing relationship with Iran. Applicant has little sense of loyalty to India. He spent only his early and formative years in India and came to this country with his wife and young daughter for better living conditions and prospects for the future. This approach is no different than generations of immigrants who came to the United States for a better life. He achieved his goal, finding good employment for him and his wife, better education for his children, and more opportunities for his family. He and his family established that they have a deep sense of loyalty and admiration for the United States and its way of life. This is confirmed by the testimony of his neighbors and co-workers. He and his family members became United States citizens as soon as they could, and have been successful citizens. They see the United States as offering freedom, justice, and tolerance with an opportunity to reach their potential. While Applicant provided funds to assist his parents and purchased a house for them, he did so as a son and not to assist the government of India or any terrorist element in the country. His visits to India were in the ordinary course of visiting his family and not to further any political entity in India.

A conflict of interest in this case is extremely unlikely. Applicant's siblings are homemakers and engineers or production workers. His in-laws are farmers and vegetable vendors. Their positions and activities, as well as their location in India, make it unlikely that Applicant will be placed in a position to have to choose between their interests and the interests of the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. FI MC AG ¶ 8(a) and (b) apply. It is clear from Applicant's and his wife's testimonies that there is a close relationship their family in India. They talk to them frequently, provided a house for Applicant's parents to reside, and Applicant sends funds for their support. The relationship is close and not casual. FI MC AG ¶ 8(c) does not apply.

Applicant and his wife have investment property in India, but it is only a small portion of their total investments. Their investments in the United States are substantially greater than any investment in India. The value of the property and investment in India is small. In fact, the investment value has fallen during the recent economic downturn. FC MC ¶ 8(f) applies. Applicant has met his heavy burden to show that his contact with his family and in-laws in India do not cause a security concern. I conclude Applicant has mitigated security concerns rising from his contact with his family in India.

### **Whole-Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I carefully considered all of the circumstances discussed above in regard to disqualifying and mitigating conditions as well as the following factors in light of the whole-person concept. The whole-person concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a commonsense determination concerning Applicant's security worthiness. Applicant has a close relationship with his family members and in-laws in India because he talks to them frequently by telephone, visits them every two years, purchased a house for his parent's residence, and sends funds for his parents' medical care. These simple facts alone might be sufficient to raise security concerns over Applicant's vulnerability to coercion, exploitation, or pressure. However, mere family ties with people in a foreign country are not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a security risk depends on an evaluation of the facts and circumstances of the family ties.

Applicant has strong loyalties to the United States. He and his family came to the United States for a better life. They succeeded in becoming part of the United States

culture like many immigrant families before them. He and his family participate in local activities like any other family. He is regarded as loyal, trustworthy, and reliable by those that know and work with him. His neighbors consider him to be a good citizen and neighbor. Applicant has established his loyalty to the United States. His country of birth and where his family members reside, India, is a partner of the United States in many international endeavors. While India experiences incidents of terrorism and maintains a relationship with Iran, these facts create only an ordinary risk of vulnerability to exploitation, inducement, manipulation, pressure, or coercion. Applicant's loyalty to the United States and the position and activities of his family in India make it unlikely that he will have to choose between their interest and the interest of the United States. Overall, on balance, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has met the burden of mitigating all potential security concerns arising from his family members in India. Accordingly, I find that Applicant has mitigated the security concerns arising from foreign influence.

### **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 - 1.i:	For Applicant

### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge