



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-01379

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: Archibald J. Thomas, III, Esquire

April 1, 2011

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On September 15, 2008, Applicant applied for a security clearance and submitted both an Electronic Questionnaire for Investigations Processing (e-QIP) and Questionnaire for Sensitive Positions versions of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of foreign influence interrogatories. He responded to the interrogatories on June 9, 2009.<sup>2</sup> On an unspecified date, DOHA furnished him another

<sup>1</sup> Government Exhibit 1 (SF 86 - Archival Copy, dated September 15, 2008); Government Exhibit 1 (SF 86 - Questionnaire for Sensitive Positions, dated September 15, 2008). Henceforth, because the Archival Copy of the SF 86 is very difficult to read, and the information in it is identical to the other version of the SF 86, further references will cite the other version.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated June 9, 2009).

set of interrogatories. He responded to the interrogatories on June 9, 2009.<sup>3</sup> On April 15, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on April 23, 2010. In a sworn statement, dated April 28, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 8, 2010, and the case was assigned to me on August 4, 2010. A Notice of Hearing was issued on August 23, 2010, and I convened the hearing, as scheduled, on September 24, 2010.

During the hearing, 2 Government exhibits (GE 1-2) and 11 Applicant exhibits (AE A-I, AE K-L) were admitted into evidence, without objection. There was no AE J. Applicant and three other witnesses testified. The transcript of the hearing (Tr.) was received on October 1, 2010.

### **Rulings on Procedure**

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to India, appearing in 15 written submissions. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding India in publications of the U.S. Department of State,<sup>4</sup> U.S. Department of Justice,<sup>5</sup> U.S. Department of

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<sup>3</sup> Government Exhibit 3 (Applicant's Answers to Interrogatories, dated June 9, 2009).

<sup>4</sup> U.S. Department of State, Bureau of South and Central Asian Affairs, *Background Note: India*, dated November 2, 2009; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Reports: India*, dated March 11, 2010; U.S. Department of State, Bureau of Consular Affairs, *Travel Alert*, dated May 13, 2010; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports: South and Central Asia Overview, Country Reports on Terrorism 2008*, dated April 30, 2009; U.S. Department of State, *Country Specific Information: India*, dated February 17, 2010; and U.S. Department of State, Bureau of Public Affairs, *U.S. – India Agreements and Achievements*, dated July 20, 2009.

<sup>5</sup> U.S. Department of Justice, Press Release, *Businessman Pleads Guilty to Supplying Indian Government with Controlled Technology*, dated March 13, 2008.

Commerce,<sup>6</sup> the Congressional Research Service,<sup>7</sup> and the Office of the National Counterintelligence Executive.<sup>8</sup>

The seven press releases were presented apparently to substantiate that India actively pursues collection of U.S. economic and proprietary information, and, therefore, Applicant's relationships with his various family members and extended family members in India raises suspicion of him. None of the cases cited involves Applicant personally or involved espionage through any familial relationship. The anecdotal evidence of criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, or any member of his family or extended family, was ever involved in any aspect of the cited cases or ever targeted by any Indian intelligence official. Furthermore, these press releases are little more than self-congratulatory public relations products issued by public relations offices, with the collateral effect of deterring other criminals contemplating possible attacks on our national security.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>9</sup> as set forth below under the India subsection. However, while I do not reject the facts set forth in the various press releases, the inference that somehow Applicant or his family, or his extended family participated in criminal activity was not argued during the hearing and is specifically rejected.

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<sup>6</sup> U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Export Privileges Denied to Indian Corporation and Three Executives*, dated December 7, 2007; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *California Man to Plead Guilty in Plot to Export Restricted Technology to India*, dated July 30, 2007; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *High-Tech Firms/Executives Sentenced in Export Case*, dated November 21, 2005; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Chyron Corporation Settles Charges of Unlicensed Export to India*, dated August 30, 2004; U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Berkeley Nucleonics Corporation Settles Charges of Unlicensed Exports*, dated June 28, 2004; and U.S. Department of Commerce, Bureau of Industry and Security, Press Release: *Sentry Settles Charges of Unlicensed Exports*, dated June 25, 2004.

<sup>7</sup> Congressional Research Service, Library of Congress, *India – U.S. Relations*, dated January 30, 2009.

<sup>8</sup> Office of the National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, FY 2008, dated July 23, 2009.

<sup>9</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents). Tr. at 36-37.

## Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations (§§ 1.a. through 1.g., 1.i., and 1.j.) of the SOR. Those admissions are incorporated as findings of fact. He denied the remaining allegation (§ 1.h.).

Applicant is a 38-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been specified. From February 1998 until June 2000, he was a technical manager for a defense contractor. That company was acquired and merged into another defense contractor, and Applicant remained in the same position with the new company until September 2008.<sup>10</sup> He has been employed as a senior software engineer with his current employer, another government contractor, since October 2008.<sup>11</sup>

Applicant was born in 1972 in India.<sup>12</sup> He initially came to the United States in August 1996, on a student visa, to pursue a master's degree in computer science, and he obtained the degree in December 1997.<sup>13</sup> Upon receiving his degree, he decided to remain in the United States to work and reside.<sup>14</sup> His progression from student visa to temporary visa, to permanent resident, culminated with his naturalization as a U.S. citizen in July 2008.<sup>15</sup>

In July 1997, while still a graduate student in the United States, Applicant returned to India briefly where he married his wife, a citizen and resident of India.<sup>16</sup> She, too, became a naturalized U.S. citizen in July 2008.<sup>17</sup> They now have two sons, both born in the United States, in 2001 and 2007, respectively.<sup>18</sup>

Applicant's father, now afflicted with dementia, a form of Alzheimer's disease, was born in India in 1934, before India had achieved independence from the United Kingdom, and he is a citizen-resident of India.<sup>19</sup> He retired in about 1992 from his position as a bank officer.<sup>20</sup> Applicant's mother was born in India in 1940,<sup>21</sup> also before

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<sup>10</sup> Government Exhibit 1, *supra* note 1, at 4-5.

<sup>11</sup> Tr. at 66.

<sup>12</sup> Government Exhibit 1, *supra* note 1, at 2.

<sup>13</sup> *Id.* at 4; Tr. at 74.

<sup>14</sup> Tr. at 74.

<sup>15</sup> *Id.* at 74-75; Government Exhibit 1, *supra* note 1, at 2.

<sup>16</sup> Government Exhibit 1, at 6.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 7-8.

<sup>19</sup> *Id.* at 7; Applicant's Response to the SOR, dated April 28, 2010, at 4.

<sup>20</sup> Government Exhibit 2, *supra* note 2, at 4.

independence, and she too is a citizen-resident of India.<sup>22</sup> She has always been a homemaker, and has never worked outside of the family residence.<sup>23</sup> Neither parent has ever had any affiliation with the Indian government or intelligence service.<sup>24</sup>

Applicant has two brothers and one sister. One brother is a professional photographer, with his own photo studio; the other brother is an engineer, working for an American company; and his sister is a physician, working in a private hospital.<sup>25</sup> All are citizen-residents of India.<sup>26</sup> None of his siblings has ever had any affiliation with the Indian government or intelligence service.<sup>27</sup>

The parents and brother of Applicant's wife are also citizen-residents of India.<sup>28</sup> His father-in-law, currently semi-retired, was a small business owner.<sup>29</sup> His mother-in-law is a homemaker who occasionally assisted her husband at his workplace.<sup>30</sup> His brother-in-law is a small business owner now running the family business.<sup>31</sup> No member of this segment of Applicant's extended family has ever had any affiliation with the Indian government or intelligence service.<sup>32</sup>

Applicant also has several casual friends, originally from India. Applicant met these individuals either while attending various schools in India, or the United States, or as coworkers in the United States. These contacts now work and reside in the United States. Some of them have become U.S. citizens.<sup>33</sup> None of his casual friends has ever had any affiliation with the Indian government or intelligence service.<sup>34</sup>

The frequency of Applicant's on-going contacts with the members of his family, extended family, and casual friends is varied. He calls his parents on an average of

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<sup>21</sup> Government Exhibit 1, *supra* note 1, at 7.

<sup>22</sup> *Id.*

<sup>23</sup> Applicant's Response to the SOR, *supra* note 19, at 4.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; Government Exhibit 1, *supra* note 1, at 8-9.

<sup>26</sup> *Id.*

<sup>27</sup> Applicant's Response to the SOR, *supra* note 19, at 4.

<sup>28</sup> Government Exhibit 1, *supra* note 1, at 9-10.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 9-10.

<sup>31</sup> Applicant's Response to the SOR, *supra* note 19, at 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

once each week to check on their welfare.<sup>35</sup> He calls his siblings once every one to two months, on special occasions such as birthdays, and to check up on their parents' health.<sup>36</sup> Before Applicant became a U.S. citizen, he took four personal trips and one business trip to India staying for various periods with his parents and meeting with his siblings during family dinners.<sup>37</sup> Applicant has very little continuing interaction with his in-laws or brother-in-law. While he owned a residential property in India, the interaction was more frequent, generally related to the property. Now, however, the property has been sold and they do not maintain communication.<sup>38</sup> Applicant does not maintain communication with his brother-in-law, and it has been one year since they last spoke.<sup>39</sup> Since Applicant relocated and took his current position, he has had infrequent contact with most of his casual friends.<sup>40</sup>

When Applicant and his wife became naturalized U.S. citizens, they took an oath of allegiance to the United States. That oath included the words:<sup>41</sup>

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen.

Applicant explained the emotions of the moment:<sup>42</sup>

The day I took oath with my wife was a very emotional day for me. Having gone through various stages applying for a temporary visa, it was very emotional for me and my wife to finally be recognized as United States citizens. It is something that both my wife and I are very proud.

And being registered to vote, that was an emotional day to me to be actually able to vote during the presidential elections back in 2008. We're very proud to be American citizens. I have no loyalty to India or any other country. This is our home now. This is where I want to see my children grow up and be successful in their careers.

In November 2004, during a booming real estate market in India, Applicant and his wife purchased a residential rental property in India for US\$241,223, with a

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<sup>35</sup> *Id.* at 4.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 4, 7.

<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 8 C.F.R. § 337.1(a) (1995).

<sup>42</sup> Tr. at 77.

mortgage loan from an Indian bank.<sup>43</sup> At the same time, he opened a bank account in India to deposit rental income and mortgage payments.<sup>44</sup> He rented the property for US\$1,062 per month.<sup>45</sup> Applicant's in-laws helped with the closing costs and served essentially as the local property managers.<sup>46</sup> Applicant estimated that his monthly net income from the rent, after taxes and one-half of the rent being retained by his in-laws, was US\$448.<sup>47</sup> In July 2008, Applicant's in-laws gave their daughter and Applicant a gift by paying off the remainder of the mortgage.<sup>48</sup> In December 2008, Applicant estimated the value of the property to be about US\$350,000.<sup>49</sup> On November 25, 2009, Applicant and his wife sold the property for approximately US\$570,000.<sup>50</sup> The proceeds from the sale were initially deposited in their bank account in India in December 2009,<sup>51</sup> and immediately transferred to their joint bank account in the United States.<sup>52</sup> On December 7, 2009, Applicant informed his facility security officer of the sale of the property and the repatriation of funds.<sup>53</sup>

In April 2010, Applicant and his wife purchased a residence in the United States for \$251,155.16.<sup>54</sup> As of July 31, 2010, Applicant and his wife estimate they have a net worth in the United States, including their various 401(k) and IRA retirement plans, college savings plans, money market accounts, savings accounts, checking accounts, a rental property, their residence, automobiles, jewelry, and household goods, of \$898,386.<sup>55</sup>

Applicant's only foreign financial assets are his two Indian bank accounts, estimated to be worth US\$2,011 and US\$314, respectively.<sup>56</sup> They were maintained

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<sup>43</sup> Government Exhibit 1, *supra* note 1, at 10-11; Personal Subject Interview, dated December 19, 2008, at 1, attached to Government Exhibit 3, *supra* note 3.

<sup>44</sup> Applicant's Response to the SOR, *supra* note 19, at 7; Tr. at 70-71.

<sup>45</sup> Government Exhibit 2, *supra* note 2, at 17.

<sup>46</sup> Personal Subject Interview, *supra* note 43, at 1.

<sup>47</sup> Government Exhibit 2, *supra* note 2, at 17.

<sup>48</sup> Personal Subject Interview, *supra* note 43, at 1.

<sup>49</sup> *Id.*

<sup>50</sup> Tr. at 67-68; Applicant Exhibit A (Sale Deed, dated November 25, 2009), at 6.

<sup>51</sup> Applicant Exhibit B (Detailed Statement, dated April 20, 2010), at 1.

<sup>52</sup> Applicant Exhibit C (Combined Statement, dated December 11, 2009), at 1.

<sup>53</sup> Applicant Exhibit H (E-mail to facility security officer, dated December 7, 2009).

<sup>54</sup> Applicant Exhibit D (Final Settlement Statement (HUD-1), dated March 31, 2010), at 1.

<sup>55</sup> Applicant Exhibit L (List of assets and liabilities, dated July 31, 2010). The list is supported by documentation in the form of investment reports, retirement savings statements, account statements, bank statements, etc.

<sup>56</sup> Applicant Exhibit E (Detailed Statement, dated April 28, 2010).

after the sale of the Indian property to enable him to receive a possible tax refund associated with the sale.<sup>57</sup>

Applicant contends that he is “deeply rooted in [the United States].”<sup>58</sup> He has made his home here and is raising a family with two children.<sup>59</sup> He considers himself to be extremely fortunate to be given the opportunity to become first an immigrant and then a U.S. citizen, and he would not trade this opportunity to live in any other country in the world.<sup>60</sup> With two active children, Applicant is busy with their school activities, homework, music lessons, and community service.<sup>61</sup>

## **Work Performance and Character References**

Applicant’s most recent performance review has rated his overall performance as “frequently exceeds.”<sup>62</sup> His immediate supervisor, the deputy program manager as well as the author of Applicant’s performance review, has known Applicant for two years, and is very impressed with his work.<sup>63</sup> Applicant’s work ethic is outstanding; he gets along well with his peers; and he is very respectful.<sup>64</sup> Applicant’s second level supervisor, the program manager, initially interviewed Applicant for the position for which he was ultimately hired. In his opinion, Applicant’s performance since his last review has improved to an even higher level.<sup>65</sup> Based on his observations and interaction with Applicant, he believes that Applicant is trustworthy, and he supports Applicant’s application for a security clearance.<sup>66</sup> An associate manager with the prime contractor was one of the members of the interviewing panel when Applicant was hired. He has the highest respect for Applicant, his character, and his initiative,<sup>67</sup> and he

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<sup>57</sup> Applicant Exhibit H, *supra* note 53.

<sup>58</sup> Applicant’s Response to the SOR, *supra* note 19, at 3.

<sup>59</sup> *Id.*

<sup>60</sup> Tr. at 76.

<sup>61</sup> *Id.*

<sup>62</sup> Applicant Exhibit I (Performance Review, dated March 2, 2010), at 5. The exhibit is an unsigned duplicate of the original document that was signed and dated. Tr. at 43.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 42.

<sup>65</sup> *Id.* at 57.

<sup>66</sup> *Id.* at 57-58.

<sup>67</sup> *Id.* at 63-64.



supports Applicant's application for a security clearance without reservation.<sup>68</sup> Applicant has received accolades for his performance.<sup>69</sup>

## India

In 1947, the United Kingdom partitioned the Indian subcontinent into the largely Hindu India and the Muslim Pakistan, and granted them independence. The relationship between India and Pakistan has been strained, if not actually hostile, ever since, essentially over a dispute about Kashmir. During the Cold War, India's foreign policy was one of nonalignment with either of the two major power blocs. Nevertheless, while the United States generally aligned itself with Pakistan, India moved closer to the Soviet Union and received significant military support from the relationship. However, since the collapse of the Soviet Union in 1991, India has moved closer to the United States. The United States and India are the world's largest democracies, and the United States is India's largest trade and investment partner. They have common principles and shared national interests, including defeating terrorism, preventing weapons proliferation, and maintaining regional stability. They are also both committed to political freedom protected by representative government.

In the course of its history since independence, two Indian prime ministers were assassinated; there have been continuing hostilities between India and Pakistan; and there have been Islamic terrorist attacks in India, with the most recent attack occurring in 2008. After the Al-Qaeda attacks on the United States on September 11, 2001, Indian intelligence agencies provided the United States with substantial information on that terrorist organization's activities in Pakistan and Afghanistan. Since that time, the U.S.-India security cooperation has flourished, with greatly increased counterterrorism cooperation. U.S. diplomats rate military cooperation among the most important aspects of the transformed bilateral relations. The two countries have held a series of unprecedented and increasingly substantive combined military exercises.

In 2008, Secretary of State Clinton acknowledged the new administration's desire to "further strengthen the excellent bilateral relationship" between the two countries. Nevertheless, disagreements exist. Some Indian officials express concern that the United States is a "fickle" partner that may not always be relied upon to provide the reciprocity, sensitivity, and high-technology transfers sought by India. Some U.S. government officials have criticized India's extensive trade and investment barriers, its nuclear weapons programs, the pace of India's economic reforms, its human rights practices, and its inadequate laws and ineffective enforcement of intellectual property rights protection.

Under its constitution, India is a "sovereign, socialist, secular, democratic republic." It is a multiparty, federal, parliamentary democracy, with a bicameral

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<sup>68</sup> *Id.* at 64-65.

<sup>69</sup> Applicant Exhibit G (Various e-mails, various dates).

parliament, including the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). While the central government has greater power in relation to its states, the position of president is largely ceremonial. The real national executive power is centered in the Cabinet (senior members of the Council of Ministers), led by the prime minister. India's independent judicial system began under the British, and its concepts and procedures resemble those of Anglo-Saxon countries.

There is evidence that India is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations.

## 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."<sup>70</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>71</sup>

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>72</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and it has the burden of

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<sup>70</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>71</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>72</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>73</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>74</sup>

Clearance 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."<sup>75</sup> 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. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 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

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<sup>73</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>74</sup> *Egan*, 484 U.S. at 531

<sup>75</sup> See Exec. Or. 10865 § 7.

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.

The mere possession of close family ties with a person in 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 information.<sup>76</sup> Applicant's relationship with his parents, siblings, in-laws, and his wife's sibling, as well as his financial interests in India, are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 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" is potentially disqualifying. Similarly, under 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" may raise security concerns. In addition, under 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," may raise security concerns. Also, it is potentially disqualifying under AG ¶ 7(e) if there exists "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." I find AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his family members and extended family members who are Indian citizen-residents, as well as closer examination of his foreign financial interests, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where "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." Similarly, AG ¶ 8(b) may apply where the evidence shows "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." In addition, AG ¶ 8(c) may apply where "contact or

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<sup>76</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

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.” Also, AG ¶ 8(f) may apply when “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.” In this instance, Applicant’s relationship with his parents and siblings is neither casual nor infrequent. Accordingly, AG ¶ 8(c) does not apply as it pertains to them. However, considering Applicant’s more casual and infrequent relationship with his brother-in-law, as well as his evolving and more current infrequent relationship with his in-laws, AG ¶ 8(c) does apply. AG ¶ 8(d) partially applies.

In assessing whether there is a heightened risk because of an applicant’s relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>77</sup> In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”<sup>78</sup>

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, since the breakup of the Soviet Union, the United States and India have developed an increasingly warm and friendly relationship, making it unlikely that the Indian government would attempt coercive means to obtain sensitive information. However, it does not eliminate the *possibility* that India would employ some non-coercive measures in an attempt to exploit a relative. While Applicant’s parents and siblings, as well as his in-laws and brother-in-law, still reside in India, there may be speculation as to “some risk,” but that speculation, in the abstract, does not, without more, establish sufficient evidence of a “heightened risk” of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant’s parents or siblings, or his in-laws or brother-in-law are, or have been, political activists, challenging the policies of the Indian government; that terrorists have approached or threatened Applicant or his parents or siblings, or his in-laws or brother-in-law, for any reason; that the Indian

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<sup>77</sup> See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

<sup>78</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

government has approached Applicant; that his parents or siblings, or his in-laws or brother-in-law, currently engage in activities that would bring attention to themselves; or that his parents or siblings, or his in-laws or brother-in-law, are even aware of Applicant's work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Indian government, which may seek to quiet those who speak out against it. Applicant has met his burden of showing there is little likelihood that those relationships could create a risk for foreign influence or exploitation. Applicant is fully involved in his children's lives and activities. He and his wife and children have "such deep and longstanding relationships and loyalties in the U.S., that [they] can be expected to resolve any conflict of interest in favor of the U.S. interest." As to his parents and siblings in India, AG ¶ 8(a) applies. As to his in-laws and brother-in-law, ¶ 8(b) applies.

Applicant has been a resident of the United States since 1996. He became a naturalized U.S. citizen, and he, his wife, and their two children reside in the United States. Now that he has sold the residential rental property in India, he no longer has any substantial foreign financial interests in India. The two bank accounts he maintains in India, are jointly worth an estimated \$2,325. They are still open to enable him to receive a possible tax refund associated with the sale of the Indian property, and they are insignificant in comparison to Applicant's overall \$898,386 net worth. That interest is too insignificant to be "used effectively to influence, manipulate, or pressure [Applicant]." AG ¶ 8(f) applies.

It is true that, before becoming a U.S. citizen in 2008, Applicant had taken five trips to India during which he visited his parents. Those trips should have no current security significance.

### **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. Applicant and his "closest family" -- his wife and two children -- are U.S. citizens residing in the United States. His Indian-born friends all work in the United States, and as everyone has matured their respective relationships have evolved into more casual and distant relationships. Applicant is not vulnerable to direct coercion or exploitation through his wife or children, or even through his casual friends now residing in the United States, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low.

A Guideline B decision concerning India must take into consideration the geopolitical situation in that country, as well as the potential dangers existing there. India, as is true with the United States, is a democracy with advanced nuclear capabilities. Both countries have both been victims of Islamic terrorists. Because both nations share a common vision for the future, it is in India's interests to maintain friendship with the U.S. to counterbalance international terrorism. It is very unlikely India would forcefully attempt to coerce Applicant through his parents, siblings, in-laws, or brother-in-law, all still residing in India. Furthermore, while there is evidence that India is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations, there is no evidence that Applicant has been targeted.

As noted above, Applicant's entire life is now centered in the United States. This is where his children are growing up and where they have school, friends, and involvement in community and school affairs. He is well respected by his friends and colleagues for his honesty, integrity, and truthfulness. That he and his parents keep in close contact should not be considered a negative factor. (See AG ¶¶ 2(a)(1) through 2(a)(9).)

Overall, 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 mitigated the security concerns arising from his foreign influence concerns.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge