



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-03552
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James Duffy, Esq., Department Counsel  
For Applicant: Kathleen E. Voelker, Esq.

August 31, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant was born in India and came to the U.S. as a student in 1985. In 2003, Applicant became a naturalized U.S. citizen and in 2006, his wife became a naturalized U.S. citizen. Applicant’s brother, a citizen and resident of India, is a deputy commander of an artillery brigade in the Indian Army. Applicant has rebutted or mitigated the government’s security concerns under foreign influence. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

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<sup>1</sup> 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)

Statement of Reasons (SOR) on June 30, 2009, detailing security concerns under foreign influence.

On July 15, 2009, Applicant answered the SOR, and requested a hearing. On August 4, 2009, I was assigned the case. On August 4, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on August 11, 2009. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. The Government also asked that administrative notice be taken of 14 additional items. Applicant testified on his own behalf and submitted Exhibits A through Q, which were admitted into evidence. On August 17, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted his brother is a colonel in the Indian Army. Applicant's admission to the SOR allegation is accepted as fact. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is the 45-year-old president of a professional consulting company providing management consulting and information technology (IT) implementation. Applicant started the company in 1996. (Tr. 131, Ex. C, E) He is seeking to obtain a security clearance. His business generates income of more than two and a half million dollars. (Ex. F, G)

In 1964, Applicant was born in India. In August 1985, at age 21, he came to the U.S. on a student Visa and started attending university. (Tr. 96, 123) He obtained a master's degree in electrical engineering. (Tr. 123) In 1989, he obtained his Ph.D. in management. In 1996, he obtained his "green card" and in June 2003, Applicant became a naturalized U.S. citizen. (Tr. 124) His Indian citizenship ended at that time, because India does not recognize dual citizenship. When he was naturalized, he took an oath renouncing all foreign allegiances and agreeing to support and defend the U.S. Constitution and U.S. laws, and to bear arms or provide noncombatant service, or civilian service on behalf of the U.S. Since becoming a citizen, Applicant has voted in every U.S. election. (Tr. 125) Applicant supports local candidates and has sponsored 12 fundraisers in his home. He served for two years on the Board of Directors for a county board for family and children's affairs and also served on the county arts council. (Tr. 126)

In 2005, Applicant's Indian passport expired. He does not have and has not ever obtained an Indian identification card. If he were an Indian citizen, he would be willing to renounce that citizenship. He receives no benefits from India. Applicant has no financial interests in India. He has no bank accounts, property interests, or investments there. Applicant and his wife own a home in the U.S. worth approximately \$600,000 that they purchased in 1997. (Tr. 128, Ex. D) They also own a condo worth approximately

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promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

\$120,000, which is used for rental income. (Tr. 129) Applicant has more than \$217,000 in retirement accounts and investment accounts in the U.S. (Ex. K)

Applicant's wife was born in India in 1965, obtained her "green card" in 1994, and became a naturalized U.S. citizen in March 2006. (Tr. 100) In 1986, she came to the U.S. on a student visa. (Tr. 96) In 1991, she obtained a master's degree in electrical engineering. (Tr. 97) Applicant met his wife in 1986 and they married in 1991. (Tr. 96) They have two children, born in the U.S., ages 10 and 14. (Tr. 102) His children are involved with soccer, football, basketball, martial arts, cub scouts, boy scouts, the chess club, music, Latin and French. (Tr. 107) Applicant and his wife are active in the PTA, are patrons of the botanical garden and the art museum. (Tr. 108)

In the last 10 years, Applicant's wife has traveled to India three times. (Tr. 104) While there, she met her husband's brother twice; once in 1994 and again in 2008. (Tr. 103) Her Indian passport expired. (Tr. 112) Her father, no longer living, was an engineer educated in California who owned his own fabric fabrication company in India. (Tr. 112) Her mother was an office assistant. (Tr. 113) She usually calls her mother once or twice a month. (Tr. 115) Her mother lives approximately 300 miles from where her father-in-law lives. (Tr. 116) His wife has two brothers living in Singapore, one who is a sales director and the other is a marine engineer. (Tr. 102)

In the past 10 years, Applicant has returned to India six times. He visited in: September 1999, December 2003, July 2006, and for a week in October and November 2006. (Ex. 1) In July 2007, Applicant went to India to attend his mother's funeral. In August 2008, just after the one year anniversary of his mother's death, he traveled to India to attend a memorial service. (Tr. 143) When in India, he stayed with his father. (Tr. 143) Since his mother has died, Applicant does not anticipate returning to India. (Tr. 183)

Applicant's father, age 73, a retired auditor, is a citizen and resident of India. Applicant has never spoken on the phone with his father during the past six years. Applicant saw his father at his mother's funeral, but did not speak to him. (Tr. 169) Even though Applicant has stayed in his father's home in 2006, 2007, and 2008, he has not spoken with him since 2003 due to a family dispute. (Tr. 178) His father and brother live approximately 20 miles apart in India. (Tr. 115) Applicant has a sister who is an Indian citizen who teaches at a community college in New Zealand. (Tr. 171) That sister's husband is a welder in a factory. (Tr. 172) Applicant has another sister who has a degree in hotel management and resides in Australia. (Tr. 171) Until recently, Applicant has seldom spoken with his sisters. However, he is planning a family trip to Australia in December and has talked to his sister about the upcoming trip. (Tr. 172)

Applicant's younger brother, age 43, is a colonel and deputy commander of an artillery brigade in the Indian Army. An Indian brigade, composed of approximately 5,000 soldiers, is normally commanded by a brigadier. (Tr. 66, 67) His brother joined the Indian Army in 1986, has served in the Army for 23 years, and is eligible to retire. (Tr. 17, 146, 149) Applicant and his brother do not ask about or discuss each other's work.

(Tr. 147-148) In the last 15 years, Applicant has seen his brother five times: in 1993, 1997, 2006, 2007, and 2008. (Tr. 149) During the nine-year period between 1997 and 2006, Applicant did not speak with his brother, did not see his brother, and did not even know where his brother lived. (Tr. 149) As a member of the Indian Army, his brother would transfer to a new location every two years.

In November 2007, during a personal subject interview, Applicant said he currently talked with his brother every two months and sees him every two years. (Ex. 2) There have been times when Applicant emailed his brother monthly and other times when long periods have elapsed without contact. Applicant included copies of emails sent to his brother and/or his sister-in-law. (Ex. H) Currently, Applicant does not exchange emails with his brother, but does exchange emails with his brother's wife. (Tr. 152, Ex. H) In 2006, Applicant called his brother seven times; in 2007, ten times; in 2008, six or seven times; and in 2009, once to obtain information necessary for Applicant's security clearance process. (Tr. 153, Ex. I and J) He also included a copy of his phone logs showing calls made to India between August 2006 and July 2009. (Ex. I, J) Applicant made calls to India during eight of those 36 months. The only time his brother has called him was in 2007, to tell him their mother had died. (Tr. 154) His brother has never visited the U.S. Applicant's sister-in-law works as a hotel manager. (Tr. 165)

The Indian Army is three times the size of the U.S. Army and is modeled on the British Army. (Tr. 53) The Indian Army is subordinate to civilian control. (Tr. 53) Most officers are promoted in the Indian Army through the rank of colonel "pretty much in lockstep" with other officers of the same year group at the military service academies. (Tr. 54) A colonel assigned to an Indian brigade attends to more administrative matters and less front line command or operational work than does a colonel in the U.S Army. (Tr. 55) Applicant said his brother was responsible for training, security, and administration of his unit. (Ex. 3)

### **Procedural and Evidentiary Rulings**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India, along with 14 attachments. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

India and the U.S. have had close relations ever since India obtained its independence from Great Britain in 1947. The United States and India enjoy good relations. India is not hostile to the U.S., nor are its interests inimical to the United States. Currently, the U.S. is India's largest trading partner and largest investment partner. India provides \$126 million in annual development assistance. (Item I at 7, Item III at 55) India's size, population, and strategic location give it a prominent voice in international affairs, and its growing industrial base, military strength, and scientific and technical capacity on issues from trade to environmental protection are indications that India's power will continue to increase.

India, the world's most populous democracy, uses a federal form of government, similar to the United States, but with more authority vested in the central government. It has a bicameral legislature modeled after Britain's parliament, and its members are selected through open elections involving several political parties. India also has an active market-oriented economy, and conducts most of its international trade with the U.S. (Item I at 7)

The U.S. recognizes India as key to strategic interests and has sought to strengthen its relationship with India. Since the end of the Cold War, India has been an advocate of issues important to non-aligned nations, and is a member of the South Asian Association for Regional Cooperation (SAARC). (Item I) During the Cold War, the U.S. tried to establish a closer relationship with India immediately after Indian independence in 1947 until 1954 when the non-aligned movement was formed. (Tr. 73) A second attempt at a closer relationship was made in 1962 following a skirmish between India and China over the border. (Tr. 74) Both the U.S. and India share a concern over the growth of China. (Tr. 57) Over the past five years the two countries have been closer partners than anytime previously. (Tr. 57) However, there are concerns about India's relations with Iran, including India's increasing cooperation with the Iranian military, but a much greater concern is Pakistan's relationship with Iran. (Item III at 26, Tr. 63)

Some countries in pursuit of obtaining intelligence information appeal to the ethnic solidarity with the individual being targeted. This is impossible in India since India is the most ethnically diverse country on earth. India is even more diverse than the U.S. (Tr. 91) There is enormous rivalry among Indian states, among different caste groups, and among linguistic groups. (Tr. 91) India does not have one universal language, but has 100 languages and five entirely different scripts. It would go against the nature of the Indian society for the Indian government to pressure an Indian relative for the disclosure of classified U.S. information. (Tr. 90)

According to its constitution, India is a sovereign, socialist, secular, democratic republic. It is a multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion people. (Item II) The U.S. and India are the world's largest democracies, both committed to political freedom protected by representative government, and share common interests in the free flow of commerce, share a common goal of promoting stability in Asia, and fighting terrorism. While there is a threat of terrorism in India, as well as in most areas of the world, 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.

Throughout its history, India's caste system, multi-cultural and multi-ethnic population, and the vestiges of colonial domination have challenged India's ability to govern certain parts of the country. India is one of the most terror-afflicted countries in the world (Item IV at 4). In 2008, more than 2300 people died from terrorist incidents in India (Item III at 49). Terrorism is mainly concentrated in Kashmir, a disputed area

bordering Pakistan where radical Muslim activists are present, central India, where Maoist rebels are fighting on behalf of landless laborers, and southern India, where Hindus and Muslims periodically clash. (Item IV at 5, Tr. 86). As a result of sometimes violent separatist movements, provincial law enforcement authorities and military militias have used excessive force to maintain order and defeat domestic terrorism. Terrorism and separatist activities are generally done in furtherance of internal issues, and are most violent in limited and remote geographic regions. Despite these problems, India is still an open society in which the rule of law is prominent.

India considers defeating terrorism and combating violent religious extremism as a critical shared security interest with the U.S. (Item III at 55). In 2000, the U.S. and India formed a joint working group on counterterrorism. It meets annually and is devoted to extending cooperation on areas such as bioterrorism, aviation security, cyber-security, terrorism, weapons of mass destruction terrorism, and terrorist financing (Item III at 49). In 2002, the U.S. and India organized a cyber security forum to safeguard critical infrastructures from attack.

There are differences between the U.S. and India over India's nuclear weapons program. The two governments continue to work closely in pursuit of mutual interests in such issues as international management of nuclear technology, and preventing the proliferation of nuclear weapons. (Item III at 36, 51) The Indian government buys most of its nuclear technology from the U.S., and it has an excellent record when it comes to protecting its nuclear arsenal.

The growth of the U.S. and India's economic ties has been accompanied by a corresponding growth in their strategic relationship. (Tr. 82) In 2005, a U.S. - India Joint Statement asserted that as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states. In 2006, Congress passed the Henry J. Hyde United States - India Peaceful Atomic Cooperation Act, which allows direct civilian nuclear commerce with India for the first time in 30 years (Item I at 11). This agreement "opens the door" for American and Indian firms to participate in each other's civil energy sector. (*Id.*) Specifically, it enables India to buy U.S. nuclear reactors and fuel for civilian use. Also, it removed and/or revised several U.S. export requirements for dual-use and civil nuclear items. (*Id.*)

In July 2007, the U.S. and India successfully negotiated an agreement on peaceful nuclear cooperation. (Item III at 3) This deal is more far-reaching than the Hyde Act (Item I at 11, Item III at 7). In August 2007, the International Atomic Energy Agency (IAEA) approved the agreement. It has not yet been approved by the 45-member Nuclear Suppliers Group, a group composed of countries that have nuclear energy capabilities who must approve such an agreement under international law (Item III at 7). Neither the U.S. Congress nor the Indian parliament has ratified the deal (*Id.* at 4-7).

Since 2002, the U.S. and India have held a series of "unprecedented and increasingly substantive" combined exercises involving all military services (Item III at

47). These exercises ensure stability in southern and southwest Asia and have enabled the U.S. to get a “first look” at fighter jets that Russia designed and sold to India (*Id.*). More than 100 U.S. Special Forces soldiers have undergone counter insurgency jungle warfare training conducted by the Indian military. For the past seven years, the U.S. and Indian navies have participated in joint naval exercises conducted near the Indian coast (*Id.*).

India purchases more weapons systems than any other developing country (Item III at 50). India purchases the majority of its weapons systems from Russia and Israel (Item III at 47). The U.S. began selling weapons systems to India in 2002. In 2007, a U.S. defense contractor negotiated a \$1 billion dollar deal with India for the purchase of military transport aircraft along with related equipment, training and services (Item III at 48). In January 2008, the U.S. approved the deal (*Id.*). Currently, U.S. defense contractors are competing with weapons manufacturers from other countries for a contract to sell multi-role, combat aircraft to India (Item III at 48). The deal when consummated “could be worth” \$10 billion (*Id.*).

India has a vibrant civil society, a free press, and a robust, democratic, political system (Item II at 15, Item III at 32). However, its judiciary is only “somewhat effective” (*Id.*) India has numerous laws protecting human rights, but lacks a coherent, well-developed mechanism to enforce them. Serious problems exist including extrajudicial killings of persons in custody, disappearances, and torture by police forces (Item II at 2).

Although the Indian government generally respects the human rights of its citizens, there remained numerous serious problems and significant human rights abuses. (Item III at 70) India’s human rights record has often been uneven. Police and security forces have engaged in extrajudicial killings of persons in custody, disappearances, torture, and rape. The lack of accountability permeated the government and security forces, creating an atmosphere in which human rights violations went unpunished. (Item II) A number of violent attacks have been committed in recent years by separatist and terrorist groups.

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

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. Indian immigrants are the fastest growing legal

group of immigrants in the U.S. The Indian-American community is well-entrenched in several U.S. business sectors.

## **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 must be considered 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. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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**

### **Foreign Influence**

Revised Adjudicative Guideline (AG) AG ¶ 6 explains the foreign influence security concern as follows:

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 considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The two conditions applicable to this case are:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and

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

(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;

Applicant's ties to his brother and mother-in-law are limited to telephone calls for family news. He has no telephone or email communication with his father and has not talked with him since 2003. His contact with his sisters has been minimal and they live in New Zealand and Australia. His communications establish ties of affection to his brother in India. There is some possibility that Applicant could be placed in a position of having to choose between the interest of a foreign individual, group, organization, or government and the interests of the United States, especially because India has a

significant lawless element, who may attempt to harm Applicant's brother to gain some kind of advantage over Applicant.

The government presented sufficient evidence to support the factual allegations in the SOR. Applicant's younger brother, a colonel in the Indian Army, is a citizen of and resides in India. Applicant has connections to his father in India, as well as his spouse's relationship with her mother living in India. AG ¶ 7(a) and 7(b) apply.

The Government produced substantial evidence of the disqualifying condition and the burden shifted to Applicant to produce evidence and prove mitigation. Three of the mitigating conditions under AG ¶ 8 are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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

Based on his relationship and depth of loyalty to the United States, Applicant can be expected to resolve any conflict of interest in favor of U.S. interests. He has lived in the United States since 1985 when he arrived to attend university. After earning two advanced degrees, he began working in the U.S. In 2003, he became a U.S. citizen and in 2006, so did his wife. When he became a naturalized U.S. citizen he took an oath that renounced his Indian citizenship. Both of his children were born in the U.S. In contrast, his ties to India have become minimal over the years. He has substantial U.S. property and no financial or property interests in India. His communication with his brother is infrequent and with his father, even less. His wife communicates with her mother in India; however their connections to the U.S. are much stronger.

As to the potential for coercion, available information shows that India is an open society, governed through a democratically-elected legislature and executive, checked by an independent judiciary. While there are notable problems regarding human rights abuses by India, all of the available information shows Applicant's brother is not likely to be subject to coercive methods to obtain information from Applicant.

A Guideline B decision concerning India must take into consideration the geopolitical situation in that country, as well as the dangers existing in India.<sup>2</sup> A “current and accurate assessment of the ‘geopolitical situation’ and the security/intelligence profile of the [foreign] country vis-à-vis the United States is crucial in Guideline B cases.”<sup>3</sup> Applicant’s relationship with his brother generates a security risk only if the contact creates a *heightened* risk of foreign exploitation, inducement, pressure or coercion (AG ¶ 7(a)). Security clearance decisions must be based on current DoD policy and standards (See ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003)).

There have been cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to India. Foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology and acquisition of sensitive U.S. technology by foreign private entities.

The risk of terrorism in India is a factor to consider in assessing the security risk. Over the past five years, India has been victimized by brazen and spectacular episodes of terrorism. Terrorism, however, is indiscriminate by nature. The possibility that it may be employed against specific individuals, such as the family member of a security clearance holder, is higher in countries that openly espouse it, are hostile to the U.S., or are controlled partially by terrorist organizations. None of these characteristics apply to India.

Although the contested border with Pakistan is a flashpoint for terrorism, and pockets of central and southern India experience terrorism stimulated by ethnic and political unrest, India remains a robust democracy firmly committed to countering terrorism, both domestically, and internationally. Over the years, India has sought U.S. counterterrorism assistance and provided terrorism assistance to the U.S. Also, it is playing a crucial role in the reconstruction of Afghanistan, and has been unfazed by the Taliban’s violent efforts to compel its withdrawal.

India’s relationship with the U.S. is as close as it has been in India’s 60 years of independence. The U.S. and India enjoy close, mutually supportive political and trade relations, are working together in the global war on terror, and their interests in controlling nuclear proliferation are generally aligned. In the 1990s, the major point of contention was development of India’s nuclear program. Now, the U.S., under the Hyde Act, is engaging in civilian nuclear commerce with India for the first time in 30 years. India and the U.S. have some significant foreign policy differences, particularly with respect to Iran. Generally, however, India’s foreign policy and strategic interests are congruent with those of the U.S.

India is a democracy. It is not a hostile, totalitarian state seeking to project its power worldwide through the brute intimidation or coercion of its citizens domestically

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<sup>2</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

<sup>3</sup> See ISCR Case No. 07-05686 (App. Bd. November 12, 2005 at 4, footnote 3).

and abroad. I am mindful of the information showing India is active in industrial espionage. Nonetheless, I conclude that there is little likelihood India, a nation friendly toward the United States, will try to leverage Applicant's relationship with his brother to gain access to the information with which Applicant works. Based on the foregoing, I conclude SOR ¶ 1.a for the Applicant, and further conclude available information is sufficient to mitigate the security concerns raised under Guideline B.

### **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.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many other [factors] raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). Substantial mitigating evidence weighs towards granting Applicant's security clearance.

Applicant has established his life in the U.S. He has spent his adult life in the U.S., having lived here more than 24 years. He has been a naturalized citizen for the past six. He earned two advanced degrees from a U.S. educational institution. All of his friends, wife, and children live in the U.S. Applicant's spouse has been living in the United States since 1986 and is a naturalized U.S. citizen. His two children were born in the United States. He is a successful member of his business community, providing services to the U.S. government. He has substantial investments in the U.S. and no investments in India. His ties to the United States are much stronger than his ties to his brother in India.

Applicant is fully entrenched in the U.S., has no foreign financial interests, and is unlikely to compromise his life here. There is no evidence Applicant has ever taken any

action that could cause potential harm to the United States. He takes his loyalty to the United States seriously. His Indian citizenship was renounced by taking his U.S. oath of citizenship. India does not recognize dual citizenship. Applicant has never had an Indian identification card. There is no derogatory information about him in the record.

A fair and commonsense assessment of the entire record before me shows the government's doubts about Applicant's suitability to have access to classified information are based solely on his brother being a colonel in the Indian Army. However, available information is also sufficient to resolve those doubts. Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. Accordingly, it is clearly consistent with the national interest to grant Applicant's request for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Foreign Influence: FOR APPLICANT

Subparagraph 1.a: For Applicant

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge