



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



In the matter of: )  
)  
) ISCR Case No.09-04994  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. Delaney, Esquire, Department Counsel  
For Applicant: Terry L. Elling, Esquire

March 31, 2010

**Decision**

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DAM, Shari, Administrative Judge:

Based upon a review of the record as a whole, eligibility for access to classified information is granted.

**History of Case**

On April 9, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on or about November 10, 2009, and requested a hearing before an administrative judge. DOHA assigned the case to me on December 4, 2009, and issued a Notice of Hearing setting the hearing for January 26, 2010. On that date, the Government offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified, called two witnesses, and offered Applicant Exhibits (AE) 1 through 6 into evidence without objection. DOHA received the transcript of the hearing (Tr.) on February 3, 2010.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to India. The request and the attached documents pertinent to India are included in the record as Hearing Exhibits (HE) I through XIV (Tr. at 17). Applicant raised objections to HE IV, and VII through XIII. After hearing argument on the objections, all Exhibits were admitted into the record with the limitation that only information pertinent to India would be considered in those Exhibits to which Applicant objected. (Tr. at 18-23.) The facts administratively noticed are limited to matters of general knowledge and pertinent to India, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.g of the SOR.

Applicant is 69 years old. He was born in India. After completing high school, he went to an Indian military academy. The Indian government then sent him to Europe to obtain a bachelor's degree in electrical engineering, which he did in 1972. After completing his education and training in naval weapons, he was commissioned an officer and served in the Indian Navy. He served in the Indian Navy from July 1961 to July 1981, when he retired, in the rank of commander, with an honorable discharge at age 40. His area of expertise was weapons' engineering and installation. (Tr. at 61-65), He had access to classified information while serving in the Indian Navy. (Tr. at 102)

Applicant immigrated to the United States in July 1982 with his wife and two daughters, all of whom were born in India. From September 1984 until December 1987, he attended graduate school part-time. (GE 3) In July 1988, he became a naturalized U.S. citizen and his wife became a naturalized U.S. citizen in 1989. Both daughters also became naturalized U.S. citizens. (GE 1) His wife is a retired educator. One of his daughters is a realtor, and the other daughter is a medical doctor, having graduated from a U.S. university. (GE at 2.) He became an American citizen "to find a better life for my family and to make sure that my children could go to the type of schools that would make them . . . good careers." (Tr. at 82) They surrendered their passports when they became U.S. citizens. (Tr. at 104)

After arriving in the United States, Applicant worked as a technical director for a federal contractor from July 1982 to December 2002, when he retired from full-time employment. (GE 1, 3) He obtained a security clearance shortly after he became a naturalized citizen in 1988. (Tr. at 71, 84) In April 2003, he started a consulting company and secured work with federal contractors, including the company that previously employed him. (GE 1) His unique background in electrical engineering and naval systems has been a valuable asset to defense contractors, resulting in the development of significant contributions to U.S. military capabilities. (Tr. at 99)

Applicant does not discuss his work with other people, including his family, which is a practice that began when he was in the Indian Navy. He takes his responsibilities for protecting classified information very seriously. As a former director for a federal contractor and supervisor of 150 engineers, he made certain that no one violated rules or regulations pertaining to classified information. (Tr. at 98-99)

Both of Applicant's parents were born and raised in India. They are deceased. His father was an attorney. (GE 2 at 2) Applicant is one of three children, all born in India. Applicant has two brothers, who are citizens and residents of India. Both of his brothers are attorneys. Applicant stays with his brothers when he visits India. (*Id.*) Applicant's father-in-law and mother-in-law were residents and citizens of India. They are deceased. (*Id.*) Less than ten of his extended family members reside in India at this time. (Tr. at 122)

Applicant has four friends, also former Indian naval officers, with whom he has maintained contact. They are citizens and residents of India. He has known them since 1963. Three of them are retired and the other one works for a private company that provides shipping operations. He visits them when he travels to India. (Tr. at 84-85) They do not have knowledge of Applicant's work projects in the United States. (Tr. at 86) He contacts his friends between six to eight times a year. Some of the friends have visited him in the United States. (Tr. at 111-113) He saw his friends in November 2009, when he traveled to India for a wedding. (Tr. at 121)

Applicant traveled to India five times between 2002 and 2009. (Tr. at 121) One of the trips was as a tourist, and the other four trips were to visit family and friends. (Tr. at 95, 121) While in India, no one questioned him about his work with a federal contractor. (Tr. at 96)

On occasion, Applicant communicated through emails with a naval attaché at the Indian Embassy. The attaché was interested in communicating with former Indian naval officers living in the United States through email newsletters. (AE 2) Applicant has never spoken to anyone at the Indian Embassy about his work. He has not had any contact with the organization since 2009. (Tr. at 95)

In 2003, Applicant's company entered into a brief business relationship with one of his Indian friends, who started a small electronics company in India. (Tr. at 87) In

exchange for his services, he obtained 100 shares of stock worth \$5,000. He later sold the stock for \$31,000 and realized a \$21,000 profit. Based on his accountant's advice, he invested the money in bonds in order to avoid paying a large amount of taxes. In February 2010, he plans to sell the bonds, transfer the money into the United States, and avoid a tax consequence. (Tr. at 89-90) The bonds are worth about \$26,000. His friend's Indian company dissolved in 2006. (Tr. at 123)

Applicant receives an annual pension of \$3,000 from the Indian government for his service in the Navy. The \$250 monthly payment is deposited directly into an Indian bank account. (GE 2 at 2; Tr. at 90) The bank account was opened in 1981. The Indian government will not deposit the money into an U.S. bank account. (Tr. at 91; AE 1) He uses the money for his vacations to India and charitable contributions. (*Id.*) Approximately \$30,000 is in the account. This account and the bond account total about \$56,000 and represent about 3% of his net worth. (Tr. at 93)

Applicant owns a house and condominium in the United States. He also owns stocks, bonds, and mutual funds. His estimated net worth is \$1.7 million. (Tr. at 69) There is no information that he has a police record or derogatory financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs or been involved in an alcohol-related incident. (GE 1.) There is no evidence in the record that Applicant breached any security policies or procedures while holding a security clearance for more than 20 years.

Two witnesses testified on behalf of Applicant. Both have security clearances. One of the witnesses has known Applicant since the mid 1990s when he interacted with him at operational meetings. At the time, Applicant was the chief engineer and technical director for a program. From 2000 to his retirement in 2002, the witness worked for Applicant. Now, the witness is the consulting manager for the division that employs Applicant. He stated that Applicant is the "model for following rules, regulations, and processes." (Tr. at 37) The witness found that Applicant's "services in terms of giving advice of the technical directions and the system engineering efforts . . . very valuable." (Tr. at 40) He believes that Applicant's contributions to our national security systems are significant. (Tr. at 41)

The second witness worked as an engineer for the defense contractor with whom Applicant was formerly employed from 1982 to 2002. (Tr. at 49) He was both a co-worker and subordinate of Applicant. (Tr. at 50) He has no reservations about Applicant holding a security clearance. (Tr. at 57)

At the hearing, Applicant credibly and sincerely asserted pride in his U.S. citizenship. He considers himself an American and not an Indian. (Tr. at 82) He stated, "When I and my family migrated to the United States, I made a conscious decision to change allegiance to this country, my adopted country. And I have stuck with that through everything." (Tr. at 97) He has made significant contributions to combat systems for the U.S. military because he feels "a loyalty to this country. And I have absolutely no allegiance or loyalty to the State of India." (*Id.*)

## **India**

I take administrative notice of the following facts: 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.

The Indian government generally respects the rights of its citizens, but numerous serious problems remain. 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. A number of violent attacks were committed in recent years by separatist and terrorist groups. In November 2008, the terrorists coordinated an attack at a hotel in Mumbai frequented by westerners.

The U.S. recognizes India as key to strategic interests and has sought to strengthen its relationship with it. The two countries 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, in fighting terrorism, and in creating a strategically stable Asia. However, differences over India's nuclear weapons program and pace of economic reform exist. There are also concerns about India's relations with Iran, including their increasing cooperation with the Iranian military.

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 mass destruction or their means of delivery. Foreign government and private entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. In March 2008, an American businessman pleaded guilty to conspiring to illegally exporting technology to entities in India.

The U.S. views India as a growing world power with which it shares common strategic interests. There is a strong partnership between the two countries and they are expected to continue addressing differences and shaping a dynamic and collaborative future. The U.S. and India seek to elevate the strategic partnership further to include cooperation in counter-terrorism, defense, education, and joint democracy promotion.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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(b) and 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 the 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern 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 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 three conditions that could raise a security concern, which may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;<sup>1</sup>

(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; and

(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 a heightened risk of foreign influence or exploitation.

Applicant has contact and connections with two brothers and four friends, who are residents and citizens of India. He also communicated with an attaché at the Indian Embassy as a result of his status as a former Indian naval officer. There is no evidence that his brothers, who practice law, are connected to the government or military or other positions in which they could benefit from Applicant's access to classified information or technology. His four friends are retired Indian naval officers with obvious connections to the military that could benefit from Applicant's work. Although India is the world's largest democracy, works closely with the U.S. on many matters, shares common strategic interest, and generally respects the rights of its citizens, it also continues to have human rights issues, has been victimized by terrorist attacks, and has received illegally exported restricted dual-use technology. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a) and (b) have been raised by the evidence. Applicant also maintains about \$56,000 deposited in Indian banks. The evidence is sufficient to raise AG ¶ 7(e).

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<sup>1</sup> 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation. Four mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions based on the facts:

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

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

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

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

Only the physical presence of Applicant's brothers in India raises a potential conflict for Applicant if he were confronted with a choice between their interests and those of the United States. While his long-term friendships with four former naval officers create a potential that their interests could be threatened to the point that Applicant would confront a choice between their well-being and his obligations to protect sensitive information of the United States, the likelihood is diminished by the fact that India is a strong democracy and strategic partner of the United States. Additionally, the Hearing Exhibits that reference the recent illegal export of U.S. technology to India do not document that coercion was utilized in the commission of the crime. Because he no longer communicates with the Indian attaché, potential conflicts raised by that association are eliminated. Hence, AG ¶ 8(a) has some application.

Applicant established the application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest. He and his immediate family members have lived in the United States since 1982. All have become naturalized U.S. citizens. He attended graduate school at a U.S. university. His daughters have careers here. Since arriving in the United States, he has worked for defense contractors on significant projects for the military and the defense of the United States and supervised 150 engineers working on



defense projects. He held a security clearance for more than 20 years without question or incident. He was trusted with classified material during the 20 years he held a security clearance. He demonstrated that he is not a security risk and proved that he can be trusted. He has strong financial ties to the U.S. with investments in the United States total \$1.7 million. He expressed a strong zeal for his work that supports our national defense. His coworkers, who worked in close contact with him, consider him to be an ethical man and a valuable asset to our national security.

AG ¶ 8(c) does not have application to the security concerns raised because Applicant's contacts with his brothers and friends are frequent and not casual. He stays with his brothers when he travels to India and contacts his friends six to eight times a year. The friends also visit him in the United States.

Applicant's net worth is \$1.7 million. His accounts in India total \$56,000, about 3% of that net, which is insignificant compared to his U.S. interests. It is unlikely that any potential threat to confiscate the accounts would cause him concern or conflict. AG ¶ 8(f) is applicable.

### **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 relevant 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.

According to 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 others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Although this case pertains to Guideline B, the security concerns do not arise from any questionable conduct by Applicant, but

rather circumstances that warrant further analysis. First, there is a risk of terrorism in India. More importantly for security purposes, terrorists in India are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's brothers or friends to obtain such information. Second, he had numerous and long-standing connections to India before he immigrated to the United States in 1982. Following his birth, he spent his formative years there. He was an Indian naval officer for 20 years and worked in the area of weapons defense. Third, two brothers remain residents and citizens of India. He maintains consistent communication with four former naval officer friends. Fourth, his consulting business performed work for his naval friend's company sometime between 2003 and 2006.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a 69-year old man who has lived in the United States for 28 years, and has been a naturalized U.S. citizen since 1988. His spouse has been living in the United States since 1982 and is a naturalized U.S. citizen, as are his two Indian-born children, now adults. His U.S. assets are worth \$1.7 million. In his current employment, he provides vital innovation and support to the U.S. military's defense systems. His ties to the United States are much stronger than his ties to family members or friends living in India. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously and adherence to the rules and regulations pertaining to classified information. While working for a defense contractor from 1982 to 2002, he held a security clearance without incident and demonstrated that he can be trusted with access to classified material. His coworkers assess him as ethical and responsible, praising his technical military contributions. He expressed a deep allegiance to the United States and gave credible testimony in response to the security concerns alleged in this case.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to foreign influence. 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 foreign influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.g: 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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SHARI DAM  
Administrative Judge